

formulations

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FNF Forum Explores Controversial Topic: Can Government Dismantle Government? by Christopher H. Spruyt

On Saturday, April 29, 1995, the Free Nation Foundation held its fourth forum at Oliver's restaurant in Hillsborough, NC. The topic for the day-long forum was "How can government establish self-government?" The assumption is that people who wish to have less government find themselves in control of a government. What can they do to dismantle it? Eleven people attended, including five who presented papers. Papers were presented by FNF directors Richard Hammer, Bobby Emory, and Roderick Long, and FNF members Phil Jacobson and Roy Cordato. The photographs in this issue were taken at the Forum.

Richard Hammer's talk, "Ideas on Taking Apart Government," included ideas from others and some of his own. He cited Thomas W. Hazlett's "The Czech Miracle: Why Privatization Went Right in the Czech Republic" (*Reason*, April 1995, pp. 28-35) and Madsen Pirie's *Dismantling the State* (1985). When each person in a large group of people has a small amount to lose from a policy, that person does not have a strong reason to oppose it. Hammer identified transaction costs as an impediment to getting people to act in an organized way to oppose policies, and suggested that a way of doing so would be to buy insurance against government.

"Virtually every act of government victimizes a class of people who would be better served by some alternative institution. If the class of people so victimized can be identified, and if innovation can overcome the transaction cost which inhibits formation of an interest group, then this interest group should be able to organize and prevail."

In Roy Cordato's talk, "The Theory of Market Failure and Economic Analysis of



Government Bureaucracies," he presented the justification usually given for government intrusion into voluntary market activity called "market failure" and the two views of the relationship between market failure and the response of government. The "traditional view" is "government bureaucrats and policy makers are benevolent and will act to correct market failures in a manner that is strictly in the public interest." The "public choice" view is that "government responses to market failure problems are likely to be unsuccessful because, like individuals acting in a market setting, bureaucrats and policy makers will behave in a self-interested manner the fact that the institutional environment is different should not change the analyst's assumptions about how people will respond to costs and benefits that they personally bear and prosper from." In summary, in the traditional view "under certain conditions markets will fail and governments will have both the ability and the will to invoke policies to correct for those failures" and in the "public choice" view "governments, while having the ability to correct for market failure, because of self-interested behavior on the part of bureaucrats and policy makers, do not have the will

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We Huddle for a Purpose

by Richard O. Hammer

We in the Free Nation Foundation work, as do other libertarian organizations, toward a goal which we call liberty. But our way of working toward that goal differs from the usual ways. So we need to tell, again and again, what we are about. This time I will tell it by imagining the scene in a football huddle. Join me there.

Our fate in this game looks ominous. While we like to believe that we can win, and while many of our players know the game better than the best of the opposition, one look at our record of losses-to-wins kills any optimism we might feel. We lack coordination. And worse, despite the rules of the game, for every player that we have on the field the bad guys have twenty.

In the huddle one of the new players starts to talk: "Those guys keep breaking the rules and the referees never call it. They are offsides, they interfere illegally with our passes, they have too many players on the field, they move the football from where the referee downs it, they grab our face masks, they ..."

"SHUT UP!" shouts another player in our huddle. Each of us in the huddle already knows all those bad things about the other team and their tactics. We cannot waste these moments, in which we might fix upon a plan, listening yet again to a recitation of the ways they cheat. What are we going to do about it? That is why we gather.

I am tired of being angry. And realistically I must acknowledge that all my venting of anger at the majority which surrounds us seems not to have advanced the day of our release from statist oppression. Accepting that it may be impossible to get our adversaries to listen to us, I want to try to make something good.

I have looked with sympathy, although with disbelief, upon attempts to start new libertarian nations. What, I have wondered, could I do to make it more likely that in the future one of these attempts might succeed?

We libertarians, I have noticed, share a common complaint, too much government. But we do not share a common vision of what to do about it. Can a vision be built? Can we describe what we want in terms so believable, so tangible, that millions of

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Statement of Purpose

The purpose of the Free Nation Foundation is to advance the day when coercive institutions of government can be replaced by voluntary institutions of civil mutual consent, by developing clear and believable descriptions of those voluntary institutions, and by building a community of people who share confidence in these descriptions.

Board of Directors

Richard O. Hammer, President
Bobby Yates Emory, Secretary
Candice I. Copas
Roderick T. Long
Christopher H. Spruyt

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Subscriptions to *Formulations* may be purchased for \$10 for four issues (one year). Membership in the Free Nation Foundation may be purchased for \$30 per year. Members receive: a subscription to *Formulations*, 20% discount on conference registration fees, invitation to attend regular meetings of the Board of Directors, copies of the Bylaws and Annual Report. Additional contributions are welcome.

FNF is a 501(c)(3) federal income tax exempt organization.

Information for Authors

We seek columns, articles, and art, within the range of our work plan. We also welcome letters to the editor which contribute to our debate and process of self-education.

Our work plan is to work within the community of people who already think of themselves as libertarian, to develop clear and believable descriptions of the critical institutions (such as those that provide security, both domestic and national) with which we libertarians would propose to replace the coercive institutions of government.

As a first priority we seek formulations on the nature of these institutions. These formulations could well be historical accounts of institutions that served in earlier societies, or accounts of present institutions now serving in other societies.

As a second priority we seek material of general interest to libertarians, subject to this caveat: We are not complaining, we are building. We do not seek criticism of existing political institutions or persons unless the author uses that criticism to enlighten formulation of an improved institution.

All submissions are subject to editing.

Submissions will be considered for publication if received by the 15th of the month preceding month of publication. Thus, the deadlines for writers are: February 15, May 15, August 15, and November 15.

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middle class people will say:

"That's what I want! And I am so sure that it will work, that it will be safe and prosperous, that I will uproot myself, my family, and my possessions, to move there whenever and wherever it happens on Earth."

If we can help build a description that good, then the work of the Free Nation Foundation will be done. We can sit back and watch. No force on Earth, I believe, will stop those millions from getting what they want. The millions might even find a way to reconstitute a free nation between these oceans. But the location of the free nation is not the critical issue. What we lack is the vision which unifies millions. Join us. Δ

Forum (from p. 1)

to carry out the necessary policies." Cordato argued that both of these views are wrong because "the theory of market failure itself is fundamentally flawed." He argued that whatever inefficiencies are present in the market are only made worse by government.

Bobby Emory took the perspective of Devil's Advocate in his talk, "You Can't Do That." He challenged the assertions of the optimists by presenting several reasons why government cannot be used to reduce government.

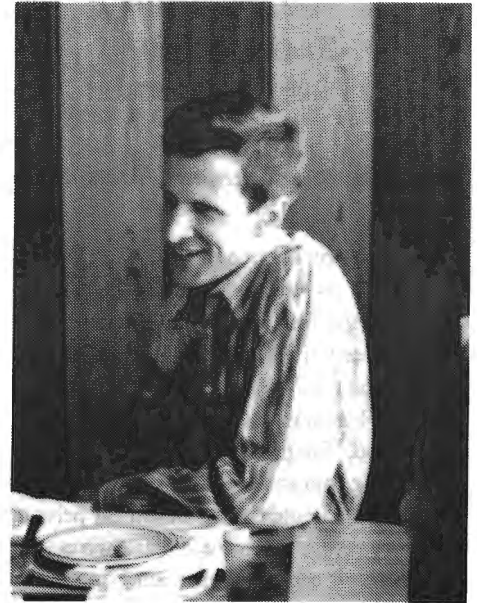
Phil Jacobson's talk "Glorious Revolution for an American Free Nation" was presented in the Spring 1995 issue of *Formulations*.

Roderick Long's talk "Dismantling Leviathan from Within" will be presented in four parts over the next four issues of *Formulations* (including the present issue). Long mentioned two reasons why the motivations of libertarians who were in charge of a government might not be as much of a problem as the motivations of the "bureaucrats and policy makers" mentioned in Cordato's talk. One reason is that other political ideologies have several goals so that even if liberty is one of them, it can be sacrificed in the name of another goal. The other is that if government power corrupts the holders of government office, the fact is that to the extent that libertarians reduce government power, they reduce its corrupting influence.

Copies of all papers presented are available in the Proceedings of the Forum. (Clip and send the order form on p. 17.) Δ

FNF Directors to Speak at New Country Foundation Conference in July

The New Country Foundation will hold its first annual conference on Saturday, 15 July 1995, at the Gramercy Park Hotel in New York City. The day-long event will feature talks by, among others, Mike Oliver, veteran new country organizer; Richard Morris, President of Sea Structures, Inc.; and our own Richard Hammer and Roderick Long.



For registration information contact Marc Joffe at 201-861-4327, or by e-mail at 71045.142@compuserve.com. Δ

Foundation News Notes

- On 11 April 1995, FNF Directors Christopher Spruyt and Roderick Long argued for drug legalization at a forum titled "A Discourse on Marijuana, Law, and Ethics," sponsored by Carolina NORML, the University of North Carolina's chapter of the National Organization for the Reform of Marijuana Laws. Spruyt talked about the harmful societal effects of drug laws: increased crime, poor quality control, swelling prison populations, and the denial of medicinal benefits to the suffering. Long distinguished the authoritarian approach to drug policy (in which the government decides for everyone which drugs are to be forbidden or required) from the libertarian approach (in which individuals set their own individualized drug policies, deciding for themselves which drugs to permit themselves and which to forbid themselves), defending the superiority of the libertarian approach on both moral and practical grounds.

- In early April, FNF President Richard Hammer attended a Ludwig von Mises Institute conference on secession in Charleston, S.C. There Mr. Hammer met, and got a chance to converse with, FNF member

(continued on page 6)



Three Voluntary Economies

by Philip E. Jacobson

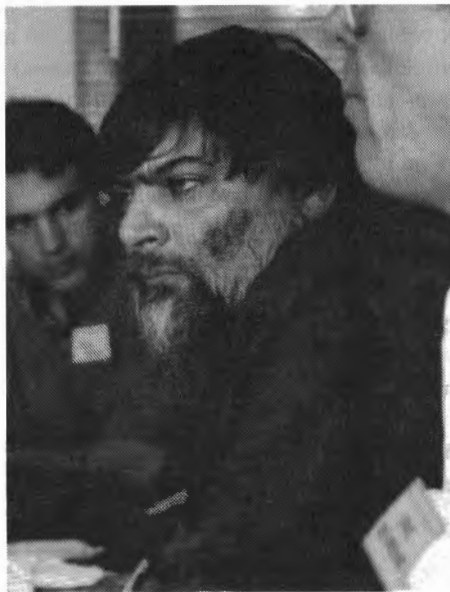
Voluntary vs. Command Economies

A free nation is not necessarily a Capitalist nation. As we seek to describe the institutions of a free nation we must consider all the alternatives. In the United States, libertarians tend to associate the idea of an economy based on voluntary relations with cash-based, for-profit enterprises. Other voluntary economic relations are possible. In addition to enterprises based on private monetary profit, there are at least two others which do not use this approach. One is the system based on charitable donations, usually of cash. The other is the system based on the charitable donation of labor.

It is often assumed by libertarians in America that, were it not for violent intervention by government or by criminals, most economic activity would be handled through profit-making business relations. This seems more a reflection of the history of the American economy than of economic analysis. It is far from true that philosophical libertarianism requires any inherent bias towards profit-oriented money economies. The older libertarian tradition of Europe (advocated in the U. S. by thinkers like Noam Chomsky) presumes that freedom from government intervention would make communes or labor-union-based syndicates (based on labor charity) the primary type of economic organization. In practice, economic relations in a society characterized by an advanced division of labor tend in all cases to be mixtures of the three economies mentioned above. The extent to which a given economic relationship is one or another of these three depends on particular situations and the preferences of individual human participants. The basic dichotomy between voluntary and involuntary relations should be the only moral division in the theory of libertarian economics.

The distinction between the "American-style" (often described as "conservative" or "rightist") and "European-style" (often described as "liberal" or "leftist") visions is a false one. It serves only to divide the advocates of freedom and allow advocates of conscription to play them off against one another. This has serious political implica-

tions which should be examined, but this essay will not do so. One political factor is important, however. The use of community moral pressure for or against an enterprise is of different significance for each of the three



Philip Jacobson

systems. Some politicians encourage the use of one of the economic types over the others because these politicians feel more comfortable with that type when trying to mobilize community pressures. This in turn can influence the prosperity of real enterprises within the context of a voluntary economic system.

The three types

Cash-for-Profit Economy

The primary characteristic of the cash-for-profit economy is an exchange of cash for goods or services. A variation of this theme involves barter instead of cash.

This system is strongly associated with private property. The provider must have a clear property title to any goods involved in a transaction, which will be transferred to the receiver. The receiver of the goods or services must also have clear title to the cash transferred to the provider. In some manner, an offer to sell is involved, followed by an acceptance of that offer. This is almost always understood to be a contractual relationship, though the contract may be only implied. Communications may be limited to the parties involved, but the most successful enterprises usually express their offer

openly within a community of potential clients.

Moral pressure is limited in this system. Any legal transactions between the receiver of cash and the receiver of goods or services are usually acceptable though they may be distasteful to third parties. Third parties may engage in ostracism in order to discourage the transaction, but this may be difficult to organize. Transacting parties who fear ostracism can often keep their activities out of the view of third parties. It is easier to influence the customers of a cash-for-profit enterprise to withhold funds from it by pointing to the flaws in the product or service received, rather than to the use of the profits. This is most effective through word of mouth between customers rather than through organized efforts. But while the use of the profits may be difficult to monitor, the primary application of the funds paid by customers, namely the providing of the product or service, is almost always visible to them. When many enterprises compete in the same industry, a considerable advantage is given to one with a good reputation.

Cash Charity Economy

The primary characteristic of a cash charity economy is that a contribution of cash is made in exchange for assurance that the contribution supports a project which is worthy. As with the "cash-for-profit" economy, this system can be based on "barter" via contributions in kind.

The system is associated with both private property and collective property. The contribution can be made from private or community funds. The receiver of charity is often thought to hold the contribution in trust for a specific community or for the public at large. Unsolicited contributions are possible, though as with cash-for-profit enterprises successful cash charity enterprises usually solicit contributions publicly. While no contractual relationship is implied (unless contributions are earmarked) there are usually general expectations on the part of the contributor which relate to the way in which the enterprise presents its image to the public.

Unlike the cash-for-profit system, a considerable moral pressure regarding use of contributions is easy for any contributor. This is due to the informal quasi-contractual relationship established when the enterprise solicited the contributions. The enterprise is expected to "do good" even when it cannot

legally be forced to do so. When contributions are earmarked, the relationship becomes fully contractual and the contributor can demand specific use of the contribution. It is also easy for third parties to put pressure on the enterprise. Any member of the community advertised as a beneficiary of the contributions, or anyone accepted by the public as an advocate for that community, has a moral right to criticize the enterprise. Successful attacks on the enterprise's public image will tend to decrease contributions to it, even if it has no competitors. Attacks are particularly easy since many if not most of the contributors will receive no benefit from the enterprise directly and will have no direct knowledge of its success in achieving its stated mission. When representatives of the enterprise challenge their critics, they will tend to claim greater expertise. But if, as is often the case, the representatives are paid for their work, the critics can claim purer motives.

Labor Charity Economy

The primary characteristic of a labor charity economy is the contribution of labor in exchange for a sense of satisfaction, either because the work is enjoyable or because it achieves desirable ends, or both.

A labor economy is associated with collective property — labor is guided by an administrative system thought to hold trust for a specific community or for the public at large. Often the source of contributed labor is also the beneficiary, as in a commune or other labor-owned enterprise. The sense of community ownership may be fostered by an overtly collectivist contract or by less legalistic means. An enterprise which is owned by a minority of its labor force or by individuals not part of the labor force may still have a collective property concept. Its management may attempt to instill a company spirit. Its workers may unite informally or via a union to express their sense of involvement and their stake in the enterprise. Where labor is strictly voluntary and unpaid, the relationship between the enterprise and the contributors is similar to a charity. One distinct difference is that the contributors can usually see how their contribution affects the enterprise's effort to achieve its mission.

Moral pressure on the enterprise is easy for any contributor. Since the contributors are already organized and usually in communication with one another, they can usu-

ally apply great pressure when they share a common view. In comparison to a cash-for-profit enterprise, moral pressure is also easy for any member of the community who is seen as an intended beneficiary of the contributions or for any advocate for that community. As stated above, in many cases the contributors are the beneficiaries. But when the beneficiaries are not contributors, it may be difficult for outside advocates of the beneficiaries to put moral pressure on the enterprise, as compared to the situation for a cash charity enterprise. The contributors of labor will tend to be seen as having good intentions as well as having greater expertise than outsider critics.

Most economies are predominantly of one form, but all economies are mixed

A given enterprise usually subscribes to one of the three economies, officially. But while this orientation will tend to be the dominant one, elements of the other two will creep into its day-to-day practice. Any healthy organization must be flexible. Dynamic management will tend to look the other way if they or if the organization can benefit from an "alternative" economic relationship. But even if management opposes "impure" relationships, real conditions, for reasons of personal benefit or of ideology, may tempt individuals within the enterprise to mix economies.

It is rare for a cash-for-profit enterprise to use the patterns of a cash charity enterprise (except as camouflage), but employees of such enterprises do much better if they feel a sense of ownership — even if there is no legal basis for the feeling. Therefore a cash-for-profit enterprise usually contains some elements of labor charity economics. An employee may merely take personal pride in the product or service being produced. The employee may identify with the organization because of the working conditions or the type of people who also work there. Management may specifically encourage this with encouraging words or even programs where employees own a portion of the enterprise. When management tends to treat the enterprise as entirely out of the hands of its labor force, labor charity economics may still come into play, though with negative motivation. Peer groups will support at least some "corruption" in favor

of employee control. This may be very limited in practice, perhaps employees deciding to change a rule or two when managers aren't looking. Or it may involve the formation of a labor union which is hostile to management. Whether the motivations are benign or negative, it is hard to exclude labor charity economics from cash-for-profit enterprises.

A cash charity enterprise will usually accept donations of labor as well, thus supporting a mixed economy. In any case the atmosphere of the organization will tend to make the employees identify with their work, encouraging labor charity economics. Thus the labor charity trends mentioned above with regard to a cash-for-profit enterprise will be stronger. But true cash-for-profit economics can also develop in a cash charity enterprise. In some situations, special training may be required to perform important labor in the enterprise, and professionalism will be high. Employees may need to dedicate themselves so much to the profession that they cannot normally make a living unless the charity pays them for their labor (as with doctors in a charity hospital). In addition, some individuals will tend to look out for themselves to the extent that they see the pay they receive as a source of personal profit. Paid employees may ask for bonus systems and benefits which are associated with claims that they are responsible for the enterprise's growth as measured by its size or its cash flow. These benefits may come to resemble those given to high-level employees of cash-for-profit style corporations. Managers may come to value the enterprise in proportion to its scale, trying to obtain "excess" income for the enterprise, to expand its capital base as is done in cash-for-profit enterprises.

A labor-charity-based organization may accept cash or in-kind donations, thus giving it some of the characteristics of a cash-charity-based enterprise. The enterprise may pay some of its workers in cash and/or provide rewards to them which are tied to its success. In such cases the rewards may not be competitive with those given in cash-for-profit enterprises but they may modify the workers' perspective in that direction in the ways mentioned above for cash charity economics. A labor charity enterprise may sell its product or service on the open market. It may provide special benefits, discounts or voting rights to customers who have contributed either labor or cash, thus giving

these customers a status similar to that of a stockholder in a cash-for-profit system.

The type of economy in an organization is only partly connected to its dominant ideology

Organizations which portray themselves in loudly ideological terms often give special praise to one of the three types of economy. Yet they may benefit predominantly from participation in one or both of the other types. The former Soviet Union extolled the virtues of collective enterprise, a labor charity system where the labor and the beneficiaries were the same community. It also praised charitable contributions across international borders. Yet much of its international economic activity was conducted as if it were one large cash-for-profit enterprise, even when it dealt with other "socialist" nations. Many religious organizations emphasize the virtues of giving and present themselves as cash charity organizations. Yet they often maintain substantial investments in cash-for-profit enterprises used (among other things) to provide luxurious living accommodations for their leaders. The Libertarian Party of the United States argues that the vast majority of economic functions should be performed by cash-for-profit enterprises. Yet it is organized primarily as a labor charity and to a lesser extent as a cash charity. Its cash-for-profit activities are negligible and of very limited success.

An organization may relate via one economy in one context, but via another economy in another context

Both cash charity and labor charity enterprises can engage in the sale of goods and services on the open market. They may behave as cash-for-profit enterprises when dealing with these customers, though the profits may go to philanthropic activities like feeding the poor or supporting medical research. Enterprises which are clearly cash-for-profit in their general operations may make substantial contributions as cash charity enterprises. At times these contributions may be made as guarantees to the buyer of goods or services (*i.e.*, "ten cents from every dollar purchase goes towards xxx charitable fund").

Within a libertarian context, all three economies are valid, subject only to the free choices of the individuals patronizing them

A society's culture may encourage all enterprises within it to use only one type of enterprise. Public schools and other institutions in the United States tend to encourage its citizens to expect cash-for-profit enterprises to handle most economic relations. Cash charity enterprises are recognized as honorable though secondary institutions in the United States. Labor charity enterprises



are given relatively small encouragement. In a similar way, institutions in the former Soviet Union encouraged citizens to endorse labor charity enterprises, especially enterprises controlled "by the people" via government institutions. Cash charity enterprises were not encouraged as an alternative. Cash-for-profit enterprises were made illegal or very difficult in most industries. As a practical matter, neither of these societies has been libertarian in either the American sense or the European sense. In both societies, the government, while entertaining the rhetoric of freedom, intervened heavily against freely-formed economic associations.

It is difficult to predict which social factors would encourage which type of economy in the absence of initiated force. Whether it is the government suppressing the establishment of privately owned cash-for-profit businesses or a private corporation hiring thugs to beat striking workers, free asso-

ciation has had little chance to show its form. Limited success has been achieved by each of the three forms of economy at different times and in different places. Intelligent management in any enterprise can benefit from being open to opportunities in all three types of economy.

All libertarians should be tolerant of enterprises using any of the three voluntary economies. It is a fine thing to discuss and praise one's favorite, especially as an alternative to coercive systems. And a certain amount of rivalry among the three types is to be expected, even encouraged, in a free society. But advocates of each type should

not adopt overly chauvinistic positions. At a time when the greatest threat to prosperity is the encroachment of coercive systems on the free associations of individuals, all libertarians should rejoice at the success of any enterprise based on voluntary relations. Δ

Phil Jacobson has been an activist and student of liberty in North Carolina since the early 1970s. For a living he sells used books, used CDs, and used video games.

News Notes (from p. 3)

Bruce Benson, author of *The Enterprise of Law: Justice Without the State*. Dr. Benson's paper, presented at the conference, told how businesses secede from the state every day, by contracting to settle disputes through private arbitration services rather than through government-run courts. About a dozen other scholars presented papers on the morality and legality of secession. Δ

Review

The State: Its History and Development Viewed Sociologically

by Franz Oppenheimer

Originally published in German, 1908
English translation reprinted
by Amo Press, 1972

reviewed by Candice I. Copas

With the goal of the Free Nation Foundation being to analyze and challenge the evolution of the institutions of government, Oppenheimer's *The State* provides invaluable background.

Oppenheimer looks back in history. All primitive tribes, he tells, carry on without anything which we would call "state"; these tribes have no organized apparatus of coercion. They are too poor to support one. He examines how the accumulation of wealth begins to make it worthwhile for one people to dominate another people. While most present-day believers in the state will contend that the state originated to assure civil order and to protect the nation from invasion, Oppenheimer makes a chillingly clear case for a less flattering origin -- the state was born in plunder, conquest and subjugation.

Oppenheimer's goal is to trace the birth and development of the state from its sociological genesis to a current constitutional form, and to project certain inclinations forward to see where these trends may lead in the future. *The State* outlines through political and economic means, the components of the primitive and the advanced feudal states, the maritime states, and the constitutional states. Oppenheimer shows that all of these states fall short of the "freemen's citizenship," his ideal society.

The Political Means and the Economic Means

Oppenheimer argues that there are two opposing means by which people try to satisfy needs, political means and economic means. One's own work and the fair exchange of one's work for the work of others is the economic means, while the forcible appropriation of the work of others is the political means. This is not a new idea. Philosophers have made this distinction for years.

"The state is an organization of the political means. No state, therefore, can come into being until the economic means has created a definite number of objects for the satisfaction of needs, which objects may be



Candice Copas

taken away or appropriated by warlike robbery," Oppenheimer claims. For this reason, primitive huntsmen and grubbers lived in practical anarchy. Huntsmen do not become part of a state structure until they find an evolved economic organization that they can subjugate. Most tribes of huntsmen had no chieftain, or if they did, the chieftain had no way of enforcing his wishes on the rest of the group. Therefore, political agendas were powerless, if they existed at all.

Grubbers were isolated farmers usually split up over disputes about property boundaries. At best they had loosely organized associations held together by oath. They were attached to the land, making it difficult to mobilize the group in warlike efforts. They had no legal system. Yet, theft was unheard of. What would the purpose be in stealing from a country of grubbing peasants? The thief would gain nothing that he didn't already have.

The herdsmen and Vikings, although preceding the state, possessed many state-like qualities. In fact, they possessed all the qualities of the modern state with the exception of a definite territory, as they were usually nomadic. In the case of the herdsmen, assuming that they each started out with an equal number of cattle, one group would become richer than another group in

a short amount of time. One group might find ideal grazing conditions and breed quickly, whereas the other loses cattle owing to drought or disease. These distinctions in fortune bring about class distinctions. So long as this distinction is brought about through economic means, it operates in modest boundaries because class structure would be constantly changing, as new tribes arise or one begins to lose wealth owing to pestilence or natural disaster. Therefore, economic and social equality are most often restored.

Social and economic equality are destroyed when political means are involved. When war is invoked and greater distinctions in class arise, the first case of economic exploitation arises: slavery. In order to be protected from prey or enemies, the smaller tribes must join the larger to survive, each taking a place in the hierarchy relating to their wealth. The huntsman carried on wars and held captives, but never made them slaves. He either kills them or adopts them as equals in his tribe. Slaves are of no use to him because he is nomadic and constantly moving, making it impossible to capitalize on the labor force of grounded slaves.

The State Develops in Six Stages

Here we have the first stage in Oppenheimer's six-step development of the state: the ability to remain stationary. Endless combats strengthened by the duties of blood feuds perpetuate warlike customs. Even if the offenders are defeated at first they return with bigger, stronger armies. For the landed state, mobilization is too slow and it is too costly to take their supplies into battle fields -- the same reason the panther defeats the buffalo in battle (to borrow an example).

The second stage includes thousands of unsuccessful revolts until the peasantry accepts its fate and no longer tries to revolt. The landowners or herdsmen end violent punishments and substandard living conditions in their own best interest. Knowing that a dead slave can no longer work and produce for him, the landowner appropriates only the surplus to the peasants, usually enough to keep them going through the winter or until the next crop season begins. The landowner learns that to show some restraint now will help lead to future wealth. Oppenheimer claims, at this point, that a "semblance of rights" develops, the right to bare necessities of life; so it comes to be

regarded as wrong to kill an unresisting man or to strip him of everything.

In the third stage peasants are allowed freedom, while still under the protection of the state. They are relieved of a few little irregularities of the former form of taxation, and there are fewer brutal outbreaks, such as the burning down of homes and public beatings. The first group of peasants then begins to subjugate other peasants, creating yet another class.

The fourth stage involves a territorial union in which different ethnic groups begin to relate. Whereas their relationship was once seen as international, they now become more intranational. This may be caused by foreign tribes or threats nearby. In the end the herdsmen stay near the peasantry. If it gets too large, the royalty settle in strategic sites. From the center, they control their subjects, but allow them to administrate their own affairs such as religion or settling disputes or having local internal economies.

In stage five, quarrels or fights break out among neighboring villages or clans, whereupon the lords preside over the conflict because if it were permitted to continue, the capacity for the peasants' "services" would be impaired. Therefore, the lords reserve the right to enforce their judgment.

The sixth, and final stage, concludes that for their subjects to be kept in order and working to their full capacity, the state acquires full intranationality. The need becomes more frequent to intervene, to punish, to coerce obedience; thus developing a habit of rule and the usage of government.

Ancient Maritime States Experienced Different Economic Forces

In the ancient maritime state, bartering became the primary economic means. Oppenheimer argues that for the first time in history, we find economic means not the object of exploitation by political means, but rather as a cooperating agent in the origin of the state. Now, there is an economic incentive to have peaceful relations with neighbors, namely more trade markets. It also provides incentive for the robber-warrior not to interfere with such markets. The value gained by the victors consists of property that is unavailable for immediate consumption. Since there are only a few articles of value, and those articles exist in large number, the marginal utility of any one kind is very low. This includes the most important product of political means, sla-

very. For example, the herdsmen's need for slaves is proportional to the size of his herds. He's likely to exchange his surplus for objects of greater value to him than slaves. Oppenheimer claims that because of this, the herdsman is always a robber and always a merchant/trader simply protecting his market.

Whether the maritime state arose from merchant colonies or piratical territories, it is still "nothing more than the organization of political means." The master class still looks down on the subjects with the same contempt. They establish laws and a constitution because highway robbery cannot be tolerated in a merchant colony. And finally, it develops capitalistic slave-work.

The Primitive Feudal State

In the primitive feudal state we find the same dominion and exploitation, maintained by a constitution and enforced when necessary. The lords claim the right of taxation, needing supplements to honor their duty of protection from foreign elements and from dangers within the state. Growth in itself conditions changes. The young state must grow and gain more power or be destroyed by the same forces that brought it into existence. The more it expands the more numerous its subjects and the denser the population. A political-economic division of labor develops further. More distinct economic and social class strata emerge. Oppenheimer calls this the "law of the agglomeration about existing nuclei of wealth." The growing differentiation becomes decisive for the growth of the primitive state and for the later growth of the feudal state.

From this, two opposing theories arise. In one case, the maritime state consists of movable wealth and property. In the other, the territorial state, consists of the development of landed property. The result of the first is economic exploitation by slavery, "leading not to the death of the state, but the death of the people because of consumption of the population." The result of the latter is the developed feudal state. "The growth of the feudal state is a continuation of the original trunk, and is therefore the origin for the further growth of the state. It has developed into a state governed by feudal systems; into absolutism; into the modern constitutional state; and will become a free citizenship." From this, Oppenheimer gathers, that the maritime state will remain centralized and tied up in money economies, owing to

the basic conditions of trade, whereas the territorial state will continue to become more decentralized as it expands in size.

As the state expands, the central power must delegate responsibilities. Keep in mind that there is no money system at this stage, therefore no tax money collected by the general treasury to disperse over the state. If the state has any hope of collecting funds of any sort from the population, it must request that the counts and landlords collect cattle (or whatever the currency) from their territorial jurisdiction. The only way that the state can then pay for this service is to give the landlord more land, as it has no money. As the landlord's territory grows, he gains more power and more people, and more freedom from the central government. Of course, the same process is happening to all of his subjects. At this point, Oppenheimer argues that it is tempting to draw the conclusion that independence from the central masters is proportional to the distance from the central authority. Thus, the birth of provinces and more localized organizations, each with their own respective power.

The developed feudal state is the same as it was in the second stage of state formation. It is a form of dominion, with political exploitation of economic means, limited by public law, in which the master class feels compelled to protect the working classes as long as they continue to work and pay taxes. Essentially, government has not changed, it only develops more layers and the same applies to the "distribution of wealth."

The Constitutional State and the Birth of Civil Liberties

Finally, civil liberties are granted. Not because the master class gives these privileges out of kindness, but rather they are forced to do so. The states become too large for the master to oversee. The cost of paying someone to oversee the operations is far too expensive. They then charge a fixed rent/tax on the subject class. Finally, the slave workers are making surplus from their land. This surplus then leads to local trade economies. The early industrial city is born, and soon develops its own money.

Suddenly money is the ideal form of wealth because it is more fluid. The feudal lord then must realize that the question is not *how can I use my power and land to gain more slaves?* but *how can I use my land to get the*

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Dismantling Leviathan from Within, Part I: Can We? Should We?

by Roderick T. Long

This paper was presented at our
29 April 1995 Forum.

It has been frequently remarked that it seems to have been reserved to the people of this country, by their conduct and example, to decide the important question, whether societies of men are really capable or not of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitutions on accident and force.

— Alexander Hamilton, 1787

It should be borne in mind that there is nothing more difficult to handle, more doubtful of success, and more dangerous to carry through than initiating changes in a state's constitution.

— Niccolò Machiavelli, 1514

What If?

The sun rises over the mountains of East Zimiamvia. Reflecting its rays, a roseate glow spreads across the white marble walls of the palaces of government, where legions of libertarian ideologues, many still hung over from the previous night's Victory Celebration, are already arriving and beginning to move into their new offices. The free nation movement, well-organized and well-funded, has finally achieved its goal. The first day of the Libertarian Republic of East Zimiamvia has begun.

The transfer of power has been accomplished in strict accordance with the principles of international law. Several major nations have granted recognition to the fledgling republic; no threat of invasion appears imminent. The newly empowered libertarians are free to pursue their domestic agenda: the dismantling of the East Zimiamvian state, and the building of a new voluntary society.

Now what?

How do they proceed? Where do they begin? How can they develop a transitional program that combines the goals of swiftness, effectiveness, compassion, consistency with libertarian principle, and minimum

likelihood of provoking an anti-libertarian backlash?

Who Are They?

The answers to these questions will depend in part on who exactly these libertarian ideologues pouring into the marble palaces are. Are they natives of East Zimiamvia, or



Roderick Long

foreigners from the outside? If foreigners, do they constitute the new majority in a perhaps hitherto sparsely populated region, or are they a small élite setting out to govern a large native population? If the latter, what is the attitude of the East Zimiamvians to their new governors: enthusiastically supportive? cautiously receptive? passively acquiescent? inveterately hostile?

If the indigenous population is sufficiently large and sufficiently hostile, the libertarian rulers, no matter how powerful, might as well pack their bags and go home. You cannot impose freedom on unwilling recipients at the point of a gun; nothing could be better calculated to turn the population *against* libertarian values than their association with the imposed requirements of an alien régime. For example, the current hostility, resurgent throughout the Islamic world, to the progressive values of secular society and the emancipation of women, is in large part a response to the policies of imperialist countries like Britain and the Soviet Union, who championed these values in the Muslim world — in combination with aggressive campaigns of military intervention and occupation.

How Did They Get There?

A closely related question: How did the libertarian governors acquire their current positions of power? If they are predominantly natives of East Zimiamvia, perhaps they came to power in the ordinary course of an election. The role of the international free nation movement may have been to support and help organize a libertarian political movement in East Zimiamvia. (Or maybe East Zimiamvia is really the United States, and the Libertarian Party has at last achieved electoral success!)

On the other hand, if the new libertarian governors are foreigners, there are several possibilities. It is unlikely that the ordinary course of a domestic East Zimiamvian election would bring a group of foreigners to power; such an event is more likely to result from a change in the government itself. (I am using "government" in the American sense, to mean the political apparatus of the state, not in the European sense to mean what Americans call an "administration.") So what has happened to the pre-existing state? There must surely have been one:

"By institutionalizing their monopolistic controls over all geographic areas on this planet, governments have transformed the known world into a vast prison system from which there is virtually no escape." (Carl Watner, *The Voluntaryist*, Vol. 66 (February 1994), p. 6.)

So has the previous governmental occupant gone out of existence, or does it still exist?

If it still exists, it is presumably the government of a larger area — call it Greater Zimiamvia — which has ceded to the free nation movement sovereignty (whether permanently or temporarily, *e.g.*, via a 99-year lease) over the territory of East Zimiamvia. Without unusual pressure (armed mobs storming the palaces of government, say), no government is likely to cede *all* its territory and thereby go out of existence; but it is not particularly uncommon for governments to voluntarily cede a *portion* of their territory. Perhaps the struggling government of Greater Zimiamvia has done so in exchange for financial and other aid from the well-funded free nation movement. In that case, what is the attitude of the native East Zimiamvians to the inhabitants of Greater Zimiamvia? If the East Zimiamvians and Greater Zimiamvians are closely bound by ethnic and cultural ties, they may well resent

the partition. On the other hand, if the East Zimiamvians are ethnically and culturally distinct from the Greater Zimiamvians, they may welcome the prospect of separatism — though in such a case they may also harbor nationalist sentiments incompatible with a willingness to let a bunch of foreign libertarians come in and dismantle their state. Any purely top-down attempt to institute libertarian policies is likely to fail. The more promising situation would be one in which a substantial number of East Zimiamvians have been convinced that they would do better under the libertarians than under the corrupt and inefficient Greater Zimiamvian government, and so the native East Zimiamvians have been putting pressure on the Greater Zimiamvian government to accept the libertarians' offers.

Now when nation X cedes territory to group Y, such cession is unlikely to include cession of sovereignty (as opposed to a mere sale of government property that will remain subject to that government's laws) unless group Y is already a sovereign nation. This is one reason that some free nation activists (*e.g.*, the Atlantis Project) favor starting a free nation on an artificial floating island initially, and then subsequently making use of their sovereign status to acquire additional sovereignty over territory on *terra firma*. Such a procedure is more likely to gain legitimacy for the emerging free nation in the eyes of international law. Another advantage of this approach is that the native East Zimiamvians may well find more attractive the prospect of uniting their nation with an already operating and successful libertarian nation when compared with the prospect of becoming guinea pigs for the untested theories of a bunch of libertarian-minded intellectuals.

There are, then, several different possible scenarios concerning the provenance of East Zimiamvia's fledgling libertarian régime. And the greater the extent to which this new régime reflects foreign rather than domestic libertarian sentiment, the more difficult the task of dismantling the East Zimiamvian state will be.

May They Legitimately Stay There?

Meanwhile, the libertarian ideologues continue to pour into the marble palaces of the East Zimiamvian capital. So far we've been asking: *How difficult will their task be?* But perhaps we should consider a prior question: *Is their task legitimate in the first*

place? In the course of answering that question, we may find that we have answered the first as well.

Some libertarians — many calling themselves "Voluntaryists" — hold that it is inappropriate for libertarians to seek or to exercise governmental power under any circumstances, even with the intent of using that power to diminish or abolish governmental power.

I am sympathetic to this objection, but in the end I think it is a mistake. Let me explain why.

The Voluntaryists' objection comes in two forms — a Pragmatic Objection and a Principled Objection. The Pragmatic Objection claims that dismantling the state from within is unworkable. The Principled Objection claims that even if such a project were workable, it would be morally wrong to attempt it.

The Principled Objection to Political Action

Let's consider the Principled Objection first. I think this is an important objection, and I want to do justice to it, so I here quote at some length George Smith's defense of the Principled Objection:

"Political power — the capacity and legal sanction to aggress against others — is integral to political office. ... I don't want *anyone* to have political power, regardless of his supposed good intentions. I object to the political office itself and to its legitimized power. ... The issue of trust is quite secondary. ... I may trust a particular libertarian politician, but I still don't want him to have political power over me. ... Libertarians should oppose this injustice *in principle*. ...

'Elect me to office,' proclaims the libertarian politician, 'give me enormous power over you and your property, but rest assured that I shall abstain from using this power unjustly.' I reply: You have no right to such power in the first place — and as a libertarian you should know this. You should be *denouncing* the very office to which you aspire. ... [But] if the institution of senator is wrong in itself (because of its built-in political power), then how can you, in good conscience, ask us to make you a Senator? ... What does it mean, in this society, to be a Senator? Among other things, it signifies the legal privilege to formulate and enact

laws without any necessary regard for the justice of those laws, and it permits one to dispense massive amounts of stolen money. Such powers, inherent in the office of Senator, are incompatible with libertarian principles. ... One cannot deny the legitimacy of the Senatorial office, as libertarians must logically do, and simultaneously advocate someone for that position. ...

This is *not* — I repeat, *not* — an issue of strategy. ... I am not merely asserting that the political method is *inefficient* in pursuit of this goal. Rather, I am arguing that the political means is *inconsistent* with libertarian principles One cannot consistently denounce the State as a band of criminals while attempting to swell the ranks of this criminal class with one's own cronies. ... To be elected to public office is to gain the legal sanction to aggress. ... To vote a person into office is to give that person unjust authority over others. ... When an LPer [*i.e.*, Libertarian Party supporter] enters the voting booth, he is attempting to place in office a person who will have unjust authority over me. But, claims the LPer, his candidate will not use that power. I reply that this, even if true, is immaterial. The legitimized power embodied in the political office *is not his to give in the first place*. ...

I accept libertarianism, and this very acceptance compels me to reject political action. Therefore, when I am told that political action is a good strategy to achieve libertarian goals, I can only reply: Even if that were true (which I don't accept), it would not change the rightness involved. ... You accuse me of purism. I reply, 'So what?' If 'purism' means anything, it means the refusal to budge on matters of principle even at the expense of apparent short-term gains. What is the alternative?" (George H. Smith, "Party Dialogue," pp. 11-254, in Carl Watner, George H. Smith, and Wendy McElroy, *Neither Bullets nor Ballots: Essays on Voluntaryism* (Pine Tree Press, Orange CA, 1983); available from Carl Watner, *The Voluntaryist*, Box 1275, Gramling SC 29348.)

Can the new occupants of East Zimiamvia's government offices give any reply to this objection?

One reply that is sometimes heard in libertarian circles is that rights are nothing more than a means of preserving liberty.

From this perspective, to insist obstinately on a continued clinging to libertarian rights even in those rare circumstances when their strict observance *impedes* the liberalizing process is to make the "purist" mistake of attaching greater importance to the means — libertarian rights — than to the end which gives those means their point — liberty itself.

I strongly disagree with this reply. It is certainly true that *one* important function of rights is the preservation of liberty. But the importance of rights is not exhausted by their instrumental value. As I see it, the wrongfulness of initiating coercion lies not solely in its harmful social effects, but above all in its betrayal of one's own human nature — an evil act in its own right, regardless of its broader consequences. (For an elaboration of this approach, on the basis of Aristotelean virtue-ethics, see my "Slavery Contracts and Inalienable Rights: A Formulation," in *Formulations*, Vol. II, No. 2 (Winter 1994-95).) Hence, on my view, one is morally obligated to refrain from the initiation of coercion even when initiating such coercion could bring about an overall increase in liberty.

As Aristotle writes:

"And yet perhaps someone might suppose, if these things are defined in this way, that being the supreme ruler is the highest good; for in this way he would have supreme power to do the most and finest actions, so that one who is able to rule ought not to yield to a neighbor, but rather to seize power for himself, father also taking no account of children, nor children of father, nor in general friend of friend, taking no thought in regard to this. For the highest good is the most choiceworthy, and doing well is the highest good. This, most likely, they therefore say truly — *if* the most choiceworthy of things really can come about for those who rob and use force. But like as not it cannot come about, and this is assumed falsely. For it is no longer possible for a supreme ruler's actions to be fine when he does not differ from his subjects as much as man from wife or father from children or master from slaves [these being preconditions, on Aristotle's theory, for the moral legitimacy and authority of a supreme ruler]; so that he who transgresses would in no respect make right, later on, the amount by which he has already devi-

ated from excellence."

(Aristotle, *Politics*, 1325 a 34-b 7; translation mine.)

On the Aristotelean view, one cannot do evil that good may come — because the result counts as good only if it is achieved in the right way. Nor is it ethically permissible to commit a lesser wrong in order to prevent others from committing a greater wrong; each of us bears primary responsibility for his or her *own* conduct, not for that of others. In that sense, then, I am a "purist"; and if I agreed with George Smith that purism was inconsistent with political action, I would follow him in forswearing political action.

Thus far, then, I am in accord with the Voluntarists: we are not justified in engaging in aggression, even in order to bring about greater liberty for all. But I disagree with the Voluntarists' claim that political activity by libertarians is necessarily a form of aggression.

The greatest battles are fought against that which is closest to us. I confess I find the Voluntarist position — in both its ethical and strategic guises — extremely attractive, even deeply tempting. About a decade ago I wrote several articles "refuting" the anarchist position I now spend much of my time defending; and perhaps in another decade I will find myself defending Voluntarism too. (God forbid, I might even end up a vegetarian — another ethical position I do not hold but find tempting. Not a pleasant prospect for someone with as little liking for most vegetables as myself!) But for now, on the basis of my current reflections, I believe the Voluntarist position to be mistaken, and that is the judgment I shall now try to defend.

Political Action as Self-Defense; or, Peril in Smallville

Some libertarian theorists (e.g., Robert LeFevre) have rejected as illegitimate any use of force, even in self-defense. (For a critique of this position, see my "Punishment vs. Restitution: A Formulation," in *Formulations*, Vol. I, No. 2 (Winter 1993-94).) But Voluntarists, while philosophically indebted to LeFevre, are not for the most part LeFevrean pacifists; they recognize the legitimacy of using force to defend oneself or other innocent parties. I contend that, in attempting to seize political power in order to dismantle the East Zimiamvian state, our libertarian politicians are engag-

ing in the legitimate project of defending the East Zimiamvians from governmental aggression.

George Smith considers this argument, only to reject it:

"To your plea of self-defense, I reply: Fine, defend yourself, but leave me alone. But voting is wrong precisely because it does not leave me alone. If you elect your candidate to office in the name of self-defense, his power will not be restricted to you and to those who voted for him. He will have power over me and others like me as well. ... You presume that you have the right to appoint a political guardian over me — a benevolent one, you claim, but a guardian nonetheless. Now as one libertarian to another, I must repeat my question: Where did you get such a right?" ("Party Dialogue," p. 23.)

Smith claims that the very act of taking political office, or of authorizing others to do so, constitutes aggression against the populace. But is this really so? Imagine that Lex Luthor is riding his evil Juggernaut Beast toward the town of Smallville, preparing to trample it and its helpless inhabitants into smithereens. Lana Lang heroically proposes to save Smallville herself by leaping onto the Juggernaut's back, kicking Lex Luthor off, and seizing the reins in order to divert the Juggernaut Beast into the nearest tarpit. But Clark Kent lectures her disapprovingly: "Tsk, tsk, Lana! Don't you realize that if you end up riding the Juggernaut Beast, its reins in your hand, then you'll be in just the same position as Luthor is now! Of course, you say that once you're in charge of the Juggernaut, you'll send it toward its doom rather than toward Smallville; and I believe you. But your benevolent intentions are beside the point. The fact remains that once you're on that creature's back you'll have the *power* to kill us all; and no one has the right to assume such power, whether or not they intend to use it. Evil Juggernaut monsters with ravaging jaws and the ability to crush entire towns are a bad thing, and I don't want *anyone* riding them around." Lana is convinced by Clark's incisive logic, and refrains from putting her plan into operation. Smallville is thoroughly demolished, and Lex Luthor gleefully heads his Juggernaut Beast on to the next defenseless town. (Clark Kent, being invulnerable, of course survives. Lana and the town's other residents

are not so lucky.)

What's wrong with Clark Kent's argument here? Its fatal flaw is that it regards the mere *capacity* to inflict harm as itself a form of aggression. This is the same logic as that employed by gun control advocates, who regard my mere *possession* of a gun as an unrightful threat against my neighbors, because having a gun gives me the *power* to blow their brains out, whether or not I in fact exercise it in this way. But on libertarian principles, it is surely not the capacity for aggression, but the exercise of that capacity,

"You admit that even the libertarian politician will have this power after he is elected, but you stipulate that it will be used for beneficent purposes. You prefer to emphasize the (presumed) *motives* of libertarian politicians — their honorable intentions; whereas I prefer to stress the *reality* of what political office entails. ... Frankly, I don't give a whit about the psychological state of the politician. ...

[You may reply:] But couldn't a libertarian accept a political office while being fully aware that the legal power inherent

right? It is not something tangible; rather, it is a *convention*. My having a legal right to do X consists in various facts about the beliefs, practices, dispositions, and institutions of a particular group of people. So let us now suppose that Smallville is menaced, not by Luthor's Juggernaut Beast, but by a violent religious cult calling itself the Minions of Moloch, who have announced their intention to invade Smallville and slaughter the unbelievers. Each Minion of Moloch wears a Ha-Ha Hat, which from the Minions' perspective symbolizes their right to inflict torture on anyone who refuses to venerate Moloch. Lana Lang (mysteriously reincarnated since her encounter with the Juggernaut) proposes to disguise herself as a Minion of Moloch, Ha-Ha Hat and all, and to infiltrate the enemy camp in order to spy on them, learn their plans, and steal or sabotage their stock of weapons. Once again Clark Kent seeks to dissuade her: "Tsk, tsk, Lana! Don't you realize that in order to disguise yourself as a Minion of Moloch you'll have to wear the Ha-Ha Hat? You know what the Ha-Ha Hat stands for; according to the conventions of the Minions, it signifies the legal right to torture unbelievers. By putting the Ha-Ha Hat on your head, you will be taking on that legal right. But the legal right to torture unbelievers is clearly illegitimate, and if you assume it you will in effect be aggressing against us all." Once again Lana is convinced, and abandons her plan; soon she and her fellow townspeople are dying slowly at the hands of the Minions of Moloch. (Even Clark succumbs this time, since the Minions have managed to get their hands on some kryptonite.)

What's wrong with Clark Kent's argument is that the convention associated with the Ha-Ha Hat is accepted *only by the Minions of Moloch*. It is true that, *according to that convention*, when Lana dons the Ha-Ha Hat she thereby assumes the right to torture unbelievers. But Lana does *not* accept that convention; on the contrary, she is working to bring that convention to an end.

The same holds true for the libertarian politician. The legal rights of aggression that are associated with political office exist only within the conventions of statist culture; the libertarian who assumes such office rejects those conventions, and so does not recognize any such legal rights. Smith would say that this is only a subjective psychological fact about the libertarian



that is forbidden; hence I may own anything from man-eating tigers to rocket launchers, as long as I use them responsibly. The libertarian politician who assumes office in order to dismantle the state will also acquire great power, at least for a while; but as long as he or she uses it solely against aggressors rather than against the innocent, the fact that this power *could* be used against the innocent does not make the libertarian politician into an actual aggressor.

But Smith would probably object that there is an important disanalogy between the government case and the Juggernaut case. If Lana Lang seizes the reins from Lex Luthor, she acquires only *power* — whose mere possession is morally permissible, so long as it is not used against the innocent. But if libertarian politicians seize the reins of the East Zimiamvian government, they acquire not only power but *legal authority*. Political power carries with it not only the ability to aggress, but the *right* to aggress (the *legal* right, that is — not, of course, the *moral* right).

in that office is illegitimate? He need not exercise the options legally available to him, after all. ...

[I would reply:] You confuse the subjective with the objective. A person can believe just about anything. A libertarian Senator may believe that he is faking it, that he doesn't really take the authority of his office seriously. He may convince himself that, although an agent and employee of the State, he is really and truly anti-state. ... But the facts remain. The office of Senator is defined independently of the desires of individual Senators. The powers of political office do not depend upon the secret desires of the LP politician, nor do they change because the politician keeps his fingers crossed while taking the oath of office." ("Party Dialogue," pp. 10-13.)

Since a legal right to aggress is illegitimate, Smith argues, it follows that no one has the right to assume it, and anyone who does so is *ipso facto* an aggressor.

But is this true? What, after all, is a legal

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Dialogue

Electronic Democracy and the Prospects for a Free Nation

by Richard O. Hammer
and Philip E. Jacobson

Richard Hammer: In our Forum on 29 April, Phil Jacobson presented his thesis that the American polity is now undergoing revolution, both fundamental and peaceful. (See his article in *Formulations*, Vol. II, No. 3 (Spring 1995).) He implies, if I am not mistaken, that the effort of the Free Nation Foundation, to foster cohesion of a breakaway free nation, is unnecessary.

I appreciate Phil's insights because they show me things in a new light. But I am naturally reluctant to discard my existing assumptions. In this letter I will attempt to assimilate Phil's message, and then to state questions which remain for me.

Phil says that modern talk shows have effective veto power over legislatures, that legislatures do not dare do something which will meet aggressive opposition on talk shows. Thus, the public need to halt passage of new, damaging, legislation has circumvented the legislatures by finding effective expression on talk shows. I think I see this.

What remains a problem, in my conception, is the need for formation of order. If government would just plain disappear then we believers in spontaneous order would expect to see emerge, through a sometimes bumpy process, an order more satisfactory than any which could be forced by state. But while government maintains an existing array of barriers to the emergence of spontaneous order we may see a great deal of decay and violence in those realms in which spontaneous order continues to be effectively outlawed by government.

Example one: potholes in streets. If government fails to mend a pothole in its street in front of my house, and if I fix it with my own money and then try to recoup by charging small tolls, I expect the government, absent when the pothole needed mending, will reappear to crush my attempt to recoup my expenses.

Example two: prosecution of sociopaths. If, in a galaxy far away, government agents,

either inept or evil, cause the death of a compound-full of people, and then if other citizens seek enquiry through existing government channels but find these channels hopelessly closed, then, frustration finding no civil release, anger may mount to dangerous levels.

Generally, where government purports to fill a need, whether mending holes in streets or healing wounds in social fabric, but fails and worse — erects barriers to others who attempt to fill the need — we may expect needs to go unmet, we may expect decay or violence.

This is my question to Phil. While talk shows may cripple the efforts of legislatures to impose new folly, I see them doing little to either: dismantle existing government-run barriers to the spontaneous order; or implant confidence in civil, spontaneous-order, solutions.

Thus where Phil sees good in the crippling of one institution, I see danger of a French-Revolution-style propagating front of hatred, with few knowing whom exactly to blame, and with the bud of spontaneous order, slow growing and fragile, repeatedly trampled underfoot.

Phil Jacobson: I agree with Rich's observation that my comments on the "changing of the guard" do not fully describe the formation of a new social order. But Rich's pessimism is unwarranted. The essay was not written to discourage readers about the breakdown of the old system, but to lay a foundation for mapping opportunities in the new one.

Rich says, "Phil implies ... that the effort of the Free Nation Foundation, to foster cohesion of a breakaway free nation, is unnecessary." FNF's Statement of Purpose speaks of its "developing clear and believable descriptions of ... voluntary institutions," which I had hoped to do in my essay. The Statement does not call for breakaway as the only scenario. Still, I believe that the voluntary institutions we propose will have world-wide significance, and that they will be copied in many locations, regardless of where they are first tried. Further, to the extent that voluntary association is allowed to the people of the world, their reorganization will inevitably involve all degrees of "breakaway."

Rich is concerned with "order." This is not a question of more or less order. The real

question is "are things going to get better or worse?" Rich says, "where Phil sees good in the crippling of one institution, I see danger of a French-Revolution-style propagating front of hatred." I see good not in the crippling of the old, but in the emergence of the new. Individuals are finding it easier to learn about the sources of their frustrations. New outlets for political concerns are emerging. For most persons, more opportunities to voice frustrations and to coordinate with others will lessen tensions.

Rich worries about potholes and sociopaths. There are already potholes and sociopaths — both have plagued civilizations for centuries. The kind of sociopathic violence Rich referred to is fueled by abusive government. It is caused by too much legalistic "order" and not enough grass roots "order." A new libertarian alliance of "liberals" and "conservatives" is reaching out through the talk shows to oppose the President's proposed "anti-terrorist" legislation (which would aggravate the problem). I think it is an example of the new system at work, and that it is succeeding in reducing tensions.

Regarding potholes I see no immediate progress. It is possible that there are communities where this is considered a high priority for talk shows which focus on local problems. But there is no perceived national "pothole crisis" so the topic isn't being discussed in all arenas the way sociopathic violence is. The old system has not broken down with respect to pothole repair. If it does, local activists will bring the topic up within the new system.

The new political system, Electronic Democracy, is still emerging. It will require a redefinition of the concept of a political party — one which is appropriate to the electric media of today rather than to the paper-and-horseback communication systems of the 18th and 19th centuries. It will probably be very fluid, resembling what we now call a "movement" or "interest" with few formal elements, and a cohesion based on electronic communication. It will probably not involve office-seeking organizations seeking to control old paper-based contracts. FNF should explore and encourage this new institution — not fear it.

This "revolution" may happen more slowly than most political revolutions — more like the "Scientific Revolution" or the "Industrial Revolution" than the French Revolution.

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Review

The Foundations of Morality

by Henry Hazlitt
(originally published 1964)

reviewed by Richard Hammer

I have been trying to think through my libertarian values and get them standing on a solid footing. To do this, I have been trying to fit together materials which include: economics, evolution and moral sentiments. Therefore when one of our subscribers recommended a book titled *The Foundations of Morality* by Henry Hazlitt, I had to read it.

I knew that I could respect the work because I know that Hazlitt understood economics; he is famous among libertarians for another of his books, *Economics in One Lesson*. Unfortunately *The Foundations of Morality* did not satisfy the particular curiosity which drove me to read it. But it did educate me in other ways.

Most of what Hazlitt gives the reader, in the book's 380 pages, is a survey and evaluation of previous work. Among the writers surveyed, who include Hume, Bentham, Locke, Adam Smith, John Stuart Mill, Kant, Mises, Plato, and dozens more, Hazlitt seems most impressed with Hume. The book is easy to read, and clear.

On the negative side, Hazlitt does not, to my notice, make a strong statement of his own. For what he covers the book seems longer than necessary and sometimes redundant. He spends perhaps half of the book refuting ideas which, from my already-libertarian stance, are not worth refuting.

A reader wanting to learn Hazlitt's view might best look in the last chapter, only six pages long. Here, on page 359, I noted Hazlitt's effort to give a name to our philosophy:

"There are two possible names for the system of ethics outlined in this book. One is *Mutualism*. ... But the name which I think on the whole preferable is *Cooperatism*"

At one point I thought Hazlitt was going to make arguments which my curiosity has hungered to see. On page 286 we find:

"...legal rights are or ought to be inviolable. ... This inviolability does not rest on

some mystical yet self-evident 'law of nature.' It rests ultimately (though it will shock many to hear this) on utilitarian considerations."

This was the idea I was looking for. But he did not go on to argue for this idea in a way that I sought.

Hazlitt embraces some use of state power. On pp. 266-7 (in a chapter titled "Freedom") a sentence snagged my eye. "The State must have a monopoly of coercion if coercion is to be minimized."

I could recommend to Mr. Hazlitt that he read *The Enterprise of Law: Justice Without the State* by Bruce Benson, or join the Free Nation Foundation. But the cruel force of time would strip my recommendation of value. Hazlitt, a predecessor upon whose shoulders we can aspire to stand, died in 1993 after a life of almost 100 years.

The Foundations of Morality, long out of print, is now available again from: The Foundation for Economic Education, Irvington-on-Hudson, NY 10533; 800-452-3518. Δ

Leviathan (from p. 12)

politician, and has no effect on the "objective" fact of "the powers of political office." But if by "the powers of political office" Smith means *legal authority*, then this too ultimately consists only in subjective psychological facts about the attitudes of participants in the statist culture, attitudes our libertarian politician does not share. And on the other hand, if by "the powers of political office" Smith means *actual capacities*, we've already established that no aggression is involved in the mere possession of unexercised capacities for aggression. Hence I cannot see that there is any ethical basis for the Principled Objection to libertarians' holding political office, in East Zimiamvia or anywhere else. (The question of oaths of office will be taken up below.)

Three Cheers for Casuistry

Now some may say: "All this is nothing but casuistry! You're simply trying to find a way to wriggle around libertarian moral principles in order to justify what you want to do!" I reply: *Of course* it is casuistry! The term may have a negative connotation today, but the tradition of casuistry is a distinguished and venerable one. In strict definition, *casuistry* means reasoning to discover the correct application of abstract moral

principles to concrete particular cases. And just as a legitimate part of the lawyer's job is to help his or her clients find whatever loopholes in statutory law may benefit them, so a legitimate part of the casuist's job is to locate similar useful loopholes in Natural Law. Of course casuistical reasoning can be abused and misapplied, just as ordinary legal reasoning can be; and it is from such misuse that casuistry has acquired its modern pejorative meaning. But casuistry has a vital role to play in practical reasoning. If one can achieve libertarian goals by wriggling around libertarian moral principles *without breaking those principles*, so much the better. Nearly everything I've said so far in this discussion, including the Smallville examples, has been pure casuistry (in the classical sense); and so it should be.

The Principled Objection, Improved

Now defenders of the Principled Objection might reply that even if libertarians may legitimately hold political power so long as their intent is to dismantle the state from within, there are moral barriers to their taking the steps necessary to succeed in such a dismantling project. Consider the following argument: Any successful dismantling of the state must be gradual (where any process lasting longer than immediate overnight abolition counts as gradual). If the East Zimiamvian state is eradicated overnight, before market-based alternatives have had time to develop, the result will be chaos, and a populace as yet unused to freedom will most likely respond to this chaos by repudiating the libertarians and at once building a new state, perhaps worse than the old one. Hence a libertarian government, in order to succeed in its goals, must adopt a policy of gradualism. But this is precisely what it cannot do, if it is to remain consistent with libertarian principles. A government that is merely phasing out taxes and regulations is a government that is continuing to tax and regulate. If libertarian officials enforce the laws they have not yet repealed, they are engaging in aggression, contrary to their moral duty, and so have become simply a new brand of thieves and thugs, however well-intentioned. On the other hand, if libertarian officials do not enforce those laws, how is this different from repealing them—the immediate abolition that seemed unworkable? Perhaps a gradualist program could be successfully carried out by a gov-

(continued on page 21)

Inalienable Rights and Moral Foundations

by Maribel Montgomery
and Roderick T. Long

Maribel Montgomery: This letter is in reaction to Roderick Long's article "Slavery Contracts and Inalienable Rights: A Formulation" (*Formulations*, Vol. II, No. 2 (Winter 1994-95), pp. 10-11). At the outset, let me confess that I have not read Robert Nozick's *Anarchy, State, and Utopia*, so I have no preconception from him about the permissibility or enforceability of slave contracts.

I find Dr. Long's Supply-Side Virtue Ethics interesting, but I also find it confusing to the issue at hand. I don't think, when I take into account all the varieties of animals and conceptions of God that I can conjure up, that it is particularly helpful to say that human beings are (or ought to be) halfway between. I do, however, believe that cooperation rather than violence is the most effective and satisfying mode of interaction among humans, and therefore ought to be practised to the fullest extent. The task of libertarians, it seems to me, is to persuade those prone to violence to learn to cooperate instead. The way to teach them is to document the superior results of cooperation through evolutionary and social history, and to contrast the desirability of the probable outcomes of present and future situations via cooperative rather than violent means. I agree with Dr. Long, therefore, that "[a] maximally human life will give central place to the distinctively human faculty of *reason*"

I am assuming that he is referring, as I am, to the definition of reason as "the power of intelligent and dispassionate thought, or of conduct influenced by such thought" (quoted from item 7b of the second edition, unabridged, of *The Random House Dictionary of the English Language*, 1987). A physically strong person may think in terms of, and practice, violence against another as an effective means of getting whatever he wants from the other in the immediate or short term, but the reasonable person will recognize that violent action invites revenge and that he will thereby jeopardize the satisfaction of his long-term goals. Conflict resolution via creative cooperative actions insures

greater satisfaction of every kind of need and want in the widest and longest-term perspective. It is the human capacity for long-term planning by way of symbolic thought that gives us a potential advantage over other animal species. However, it is behavior that is the critical element in the attainment of goals; what one does is all that another can respond to; the intention or internal thought process does not count after energy passes into actual behavior. It is only if a conduct has been influenced by the preceding thought that either one or both may be judged to be reasonable or not, and the judgment lies in knowledge of the goal and the effectiveness of the thought and/or action to attain it.

I think that the distinction between thought and action, and the overriding importance of the latter, is critical to a resolution of the "sticky rights" issue that Dr. Long raises. "Liberty" refers to the freedom *to* exhibit some *behavior* or the freedom *from* being coerced into exhibiting some *behavior*. There is no need to specify a "right" to free thought because the process is internal and therefore truly inalienable. One can think anything (s)he wants to without affecting anyone else. But, since any behavior of one person can affect another, the limits of any particular person's liberty depend on acceptance of a corresponding obligation by another not to interfere. It is to specify behavioral limits that legal rights and obligations have had to be established. Incidentally, one hears little from libertarians about obligations.

Our uniquely human language, oral or written, is a type of behavior, exhibited externally, that can affect others; therefore legal rights and obligations concerning this have had to be determined. The U. S. Constitution states a general right of free speech of the citizens, but this is too general to resolve a dispute among any individuals over their rights and obligations concerning the use of language. To be enforceable, a contract must specify a behavior, and the conditions under which it is to be carried out, including a particular time frame. The limits to free speech depend on the effect it may have on listeners, and/or the likelihood that the language will be translated into a more harmful direct behavior. For example, I can tolerate a person's statement that (s)he would like to kill me if I am confident that no more direct action in that direction will follow. But if this is a clear threat to future

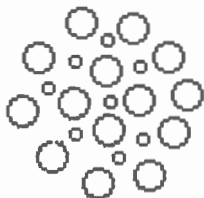
action I must prepare to protect myself. Slanderous and false statements about me are special cases that can influence others to harm me even if not followed through by any more direct negative behaviors by the speaker, and I am, therefore, justified in coercing the speaker to correct such statements and to desist from such future allegations.

So what about slavery contracts? I think Dr. Long cannot realistically claim that "the right to liberty is inalienable" (p. 11). In the first place, the word "liberty" needs to be defined more specifically, and the meaning of "inalienable" depends on the specific obligation and time frame being accepted by specific others not to interfere with whatever behavior is relevant. A slavery contract is not enforceable unless it is known what a specific slave/master relationship entails. Any decision process is inalienable because, like thought, it goes on internally, but I can see no reason why one cannot agree to sell, exchange, or give his labor or the products of it to anyone who will contract with him for such. What happens to the solution Dr. Long adopts from Randy Barnett if the labor, or product, is to be given free? As I see his example, if, in a written, signed and witnessed contract you agree to paint my dog by Tuesday, July 4, 1995, and demand no remuneration from me for this service, I may, on July 5, start a process of coercion (myself, or I may turn it over to my representative) to get the promised paint job. But I cannot demand any other service not written in the contract. The dog (poor creature) may try to break the contract, and if he disappears (on his own — not hidden by me), on July 3, I rather think the contract is no longer enforceable, but the dog probably would not prevail any other way.

If, even more stupidly, you agreed in a written, signed and witnessed contract to lick my boots any time I asked, for X period of time, I believe I have a right to pursue enforcement of the contract if you renege. But I can't make you perform any other slavery-type behaviors not specified in the contract. I don't think even any animals would get involved in this type of relationship, but who's to be the judge of properly human behavior other than those who mutually agree to engage in it? And what third party could interfere without initiating aggression? It seems to me that the moral of all these stories is that contracts are not to be entered into lightly without reasonable fore-

thought. I might also question whether the term "slavery contract" makes any real sense anyway, since a contract is entered into freely, and no "master" would give his intended "slave" a list of expected duties or a chance to refuse signing on.

Personally, when contemplating appropriate interactions I like to use the following diagram to aid my thought and behavior, because it clarifies for me just how mutually dependent we all are. Each individual has maximum freedom only inside his body outline, and even that is influenced by what (s)he must ingest to maintain life. Whatever results after internal processing becomes environment for someone else. Notice also that the shape and character of the total group under consideration may be altered by a change made by one person.



Each circle represents you or me or anybody — just keep enlarging to represent society. Add animals, plants, mountains, oceans, etc., etc., and keep expanding to represent the universe. If there is any "edge" to the universe or anything outside it, I don't think anyone can know about it.

I admire Dr. Long's analysis of the kinds of coercion described in his earlier article "Punishment vs. Restitution: A Formulation" (*Formulations*, Vol. I, No. 2 (Winter 1993-94), pp. 7, 12-13). And I accept his Principle of Proportion as something badly needed in law. I would be curious, however, to see in detail how Dr. Long might extend his arguments to apply to the death penalty, abortion, and suicide.

I very much appreciate the publication of *Formulations* as a spur to thought about difficult problems.

P. S. - My thinking has been heavily influenced by Henry Hazlitt's book *The Foundations of Morality*. I recommended reading it to Mr. Hammer and think he is going to review it for discussion at a future FNF meeting. I would be interested in learning the reactions to it of any and all of the people at FNF.

Roderick Long: I am most grateful for Ms. Montgomery's rich and wide-ranging

comments; my reply cannot do full justice to all the points she raises, but let me respond where I can. I shall set off in italics the passages to which I am responding, taken in order.

"I don't think, when I take into account all the varieties of animals and conceptions of God that I can conjure up, that it is particularly helpful to say that human beings are (or ought to be) halfway between."

Quite true. I did not mean to suggest that one should seek to discover Aristotle's Golden Mean of Virtue by first specifying the extremes of vice on either side, and then aiming for the point halfway between. Aristotle calls that the "arithmetic mean," and firmly distinguishes it from his own approach, where it is not the extremes that determine what counts as the mean, but rather the mean that determines what counts as the extremes. The point of the neither-beast-nor-god criterion is to encourage us to make sure that in formulating our conception of virtue we attach due importance and value *both* to the vulnerable embodiedness of human beings *and* to the human capacity to transcend the limitations of that vulnerable embodiedness. What makes a lifeplan objectionably subhuman or superhuman is its departure from the due balance of these two sides of our nature. And the means of ascertaining this due balance is not some mere arithmetic procedure but rather what Aristotle calls *phronēsis*, or practical wisdom — an intellectual virtue based in part on ethical reasoning and in part on a perhaps inarticulate moral sensitivity acquired through practical experience and a supportive moral environment. (The fullest presentation is in Aristotle's *Nicomachean Ethics* and *Politics*.)

"I... believe that cooperation rather than violence is the most effective and satisfying mode of interaction among humans The way to teach them is to document the superior results of cooperation through evolutionary and social history, and to contrast the desirability of the probable outcomes of present and future situations via cooperative rather than violent means. ... the reasonable person will recognize that violent action invites revenge and that he will thereby jeopardize the satisfaction of his long-term goals."

I certainly would not deny that cooperation is generally the most rational strategy for attaining one's ends. However, this

focuses on reason solely in its *instrumental* role, as a strategy for getting what one wants. My point was that the person committed to the value of rationality will seek to embody the ideal of reason not only in his means, but also in his *ends*, by choosing to deal with others through reason rather than through force. The moral problem with the aggressor is not simply that he's chosen irrational means to his ends, though this may often be true, but rather that his *ends* are irrational as well. I see the value of cooperation as being intrinsic, not merely instrumental; that is, cooperation would still be preferable to violence even if carried no strategic advantage. To defend cooperation on instrumental grounds alone runs the risk of accepting the Sophistic view criticized by Plato in Book II of his *Republic* — the view that justice is merely a compromise by those too weak to commit aggression and get away with it. The Sophists argued that just people are just only grudgingly, and would gladly abandon their commitment to justice if they could somehow acquire the magical Ring of Gyges, which made its wearer invisible and so able to commit injustice in secret. The goal of the *Republic*, and in a sense of nearly all subsequent Greek and Roman moral philosophy, was to defend the just life as worth having on its own merits, apart from any further consequences.

"... it is behavior that is the critical element in the attainment of goals; what one does is all that another can respond to; the intention or internal thought process does not count after energy passes into actual behavior."

I'm not sure I understand this. What does it mean to say that the intention or internal thought process "does not count"? Does that mean: does not count *morally*? That seems implausible. Surely there is an important moral difference between a) the person who saved my life accidentally, while attempting to kill me, b) the person who saved my life intentionally, in the hope of getting a reward, and c) the person who saved my life out of affection for me. Should we judge and treat these three people in exactly the same way? And even if we couldn't tell which person was which, wouldn't their different intentions still make for an important moral difference among them?

"It is only if a conduct has been influenced

(continued on page 18)

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Inalienable Rights (from p. 16)

by the preceding thought that either one or both may be judged to be reasonable or not, and the judgment lies in knowledge of the goal and the effectiveness of the thought and/or action to attain it."

Once again, this approach seems to assume that rationality is solely a matter of picking appropriate *means* to one's already given ends. This is a modern notion that first gained currency with David Hume. Throughout the ancient and mediæval periods, it was assumed that rationality also had a second and more important function: making an appropriate choice of *ends*. I think the moderns made a tragic mistake when they abandoned that older insight; for if the choice of ends is morally and rationally arbitrary, then moral reasoning has nothing to say against those who choose force and violence as their *ends*. Peaceful cooperation was not the most efficient means to *Hitler's* ends.

"There is no need to specify a 'right' to free thought because the process is internal and therefore truly inalienable. One can think anything (s)he wants to without affecting anyone else."

Is it true that thought by itself has no effect

on others? Parapsychologists might disagree. Still, let me grant the claim for the sake of argument. I still don't think this is what makes the right to free thought inalienable. Inalienability is a moral concept, not a causal one. To say that I have an inalienable right to X is not to say that I cannot give anyone the *power* to deprive me of X; rather, it is to say that I cannot give anyone the *right* to deprive me of X. There is no particular correlation between what powers people have and what rights people have — unfortunately!

"It is to specify behavioral limits that legal rights and obligations have had to be established. Incidentally, one hears little from libertarians about obligations."

Ms. Montgomery and I must be familiar with different circles of libertarians. The libertarians I know and read talk about obligations incessantly. (For that matter, anyone who talks about rights is implicitly talking about obligations, since in saying that so-and-so has a right to X, one is saying *inter alia* that everyone else has an obligation not to deprive so-and-so of X.)

"Slanderous and false statements about me are special cases that can influence others to harm me ... and I am, therefore,

justified in coercing the speaker to correct such statements and to desist from such future allegations."

Well, it depends. "Harm" is a slippery word, and one I think libertarians should avoid. Broadly speaking, I harm you whenever I do something that makes you worse off; but not every harm is an injustice. If I buy the last copy of the book you wanted, or marry the person you love, or persuade my friend to boycott your company, I've harmed you, but I haven't aggressed against you. If slanderous statements about you cause other people to do you an injustice (for example, a slanderer falsely accuses you of a crime, leading other people to fine you or lock you up), then the slanderer may well count as an aggressor who may legitimately be restrained by force. But if the slander merely causes other people to shun you, then I don't think coercion against the slanderer is legitimate; in that case the slanderer is a scumbag, but not a criminal. (There may be other ways of getting at the slanderer. For example, if the slanderer sells as true news what are provably lies, he can be prosecuted for defrauding the buyers.)

"I think Dr. Long cannot realistically claim that 'the right to liberty is inalienable' In the first place, the word 'liberty' needs to

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be defined more specifically, and the meaning of 'inalienable' depends on the specific obligation and time frame being accepted by specific others not to interfere with what- ever behavior is relevant."

By "liberty" I mean what I take most libertarians to mean by it: the freedom to do as I wish with my own person and property, so long as I do not interfere with the freedom of others to do the same with theirs. By saying the right to liberty is "inalienable" I mean what is generally meant: that this right (unlike, say, my right over my car) cannot be voluntarily surrendered by its holder to another. I do not see how specific obligations and time frames change matters.

"Any decision process is inalienable because, like thought, it goes on internally, but I can see no reason why one cannot agree to sell, exchange, or give his labor or the products of it to anyone who will contract with him for such."

I certainly never denied anyone's right to do these things. Civilization is based on such voluntary exchanges.

There is an important difference, however, between exchanges involving the products of labor and exchanges involving labor itself. In the case of the products of labor no difficulty arises; such products are external, alienable property, and the owner alienates them to another person, either *gratis* or for a consideration.

Service contracts are the more difficult case. I do not deny the legitimacy of service contracts! But I think there are limits to the ways in which they can be enforced. What is to be required of the contract-breaker: specific performance (painting the dog), or refund plus damages (giving back the money with interest)? I do not see any way of justifying the enforcement of specific performance except on the assumption that the contractor alienated his self-sovereignty through the contract — an assumption whose moral possibility I reject. The refund-plus-damages approach, on the other hand, is perfectly acceptable by my lights, since it involves only the transfer of *alienable* resources.

"The dog (poor creature) may try to break the contract"

Why should the dog object to having its portrait painted? (Ah, the ambiguities of contract)

"If ... you agreed ... to lick my boots any

time I asked ... I believe I have a right to pursue enforcement of the contract if you renege. ... who's to be the judge of properly human behavior other than those who mutually agree to engage in it? And what third party could interfere without initiating aggression?"

As long as mutual agreement reigns, I agree that it's nobody else's business. The problem arises when mutual agreement ceases. If I initially agreed to lick your boots, but have since reneged, then obviously I am *no longer* agreeing to the relationship. How, then, are we to evaluate my coerced compliance — as voluntary, looking to my *past* agreement, or as involuntary, looking to my *present* disagreement? My argument is that service contracts differ from transfers of goods because a person cannot relinquish title to him or herself. If I sell you some object and later change my mind, it's too late for me to take it back or dictate your use of it; my choices no longer matter because the object is no longer mine. But no decision can make *me* no longer mine; so in contracts that involve the use of my labor, consent, to justify, must be *sustained*.

"I might also question whether the term 'slavery contract' makes any real sense anyway, since a contract is entered into freely, and no 'master' would give his intended 'slave' a list of expected duties or a chance to refuse signing on."

Well, I wish that were true; but in fact, selling oneself into slavery has been a rather frequently exercised option throughout most of history. Usually some equivalent of "I hereby agree to do whatever you say from now on" was considered a sufficiently explicit list of duties.

"I would be curious ... to see in detail how Dr. Long might extend his arguments to apply to the death penalty, abortion, and suicide."

My "Principle of Proportion," mentioned by Ms. Montgomery, states: "If I aggress against you, you have the right to coerce me in whatever way is necessary to remove me from your sphere of authority, so long as your coercion is not disproportionate to the seriousness of my aggression." This Principle imposes three tests for the legitimacy of any act of coercion: first, it must be directed against an *aggressor*; second, it must be *necessary* to end the aggression; and third, it must be *proportionate* in seriousness to the aggression.

We may assume that the death penalty passes the first test, *i.e.*, that it is imposed only on aggressors. (As a matter of practical fact, this may not be true, and one reason for opposing the death penalty is the risk of mistakes. A person

wrongly imprisoned can be released and given some kind of restitution; with a person wrongly executed, it is obviously different. It was because of just such a mistake that public outcry led to the repeal of the death penalty in Britain.)

The death penalty arguable passes the third test as well: if someone is a murderer, then killing that person is not disproportionate to the seriousness of their crime.

But does the death penalty pass the second test? Not often, I suspect. If one kills a criminal whom one could instead send to prison, or into exile, then one has passed beyond what is strictly necessary to defend the sovereignty of the innocent. Hence capital punishment, in my view, is ordinarily not justified, just as punishment in general is not justified. Nor do I accept the deterrent theory, according to which we execute *this* criminal in order to deter *that* criminal; coercion is justified in order to prevent aggression, but the aggression in question must be aggression by the person to be coerced, not aggression by someone else.

There are a few cases in which the death penalty might be justified. One case would be that of an individual on the spot, far from any official legal help, who has captured a murderer but doubts his ability to keep the murderer under lock and key (suppose the murderer is an escape artist). In that case, the captor could justifiably kill his captive in self-defense. Another case might be that of a criminal who can still kill people from behind bars, perhaps a powerful gangster whose orders are conveyed to the outside through the prison network. Here it might be necessary to kill the gangster to protect the innocent (though if solitary confinement would have the same effect, it should be chosen over execution).

What about abortion? I've written on this issue at some length elsewhere. ("Abortion, Abandonment, and Positive Rights: The Limits of Compulsory Altruism," in *Social Philosophy and Policy*, Vol. 10 (Winter 1993); reprinted in Ellen Frankel Paul, Fred D. Miller, Jr., and Jeffrey Paul, eds., *Altruism* (Cambridge University Press, 1993), pp. 166-191. This is the article in which I first introduced and defended the Principle of Proportion.) To summarize briefly my rather complicated argument there:

Abortion passes the first test because an unwanted foetus is an aggressor. The foetus is innocent, of course — but I define aggression in terms of actions, not in terms of intentions.

An unwanted foetus is occupying its mother's body against her will — an act of aggression if there ever was one. (I don't think it matters whether she originally consented to the pregnancy or not. Once again: consent, to justify, must be sustained.)

Abortion passes the second test because, given current medical technology, there's no way to expel the foetus without killing it. (That will soon change, raising new moral questions of the sort dramatized in Victor Koman's novel *Solomon's Knife*. At the time I wrote the article in question I thought the absence of any non-fatal way of removing the foetus was a precondition for the permissibility of abortion. I'm no longer convinced of that — but that's another story.)

Finally, abortion passes the third test, in my view, because forcing a woman to let her body be used as an incubator is the moral equivalent of rape, and I do not think killing a rapist in self-defense is a morally disproportionate response.

As for suicide, many of my fellow inalienable-rights fans (e.g., Hegel) believe the case against slavery contracts also extends to a case against the right to commit suicide. I don't agree. A person who offers to sell himself into slavery is attempting to separate himself from his right to liberty. This is impossible, so his offer is fraudulent. But isn't a person who commits suicide trying to do the same thing with his inalienable right to life?

I don't think so. Consider: either we survive death or we do not. If we survive death, then the person who commits suicide is simply exercising his right to relocate. If we do not survive death, the person who commits suicide is not trying to separate himself from his right to life; he is simply destroying himself and his right together.

What about assisted suicide? The same old rule applies: *consent, to justify, must be sustained*. I have the right to appoint an agent to help me exercise my rights, including my right to commit suicide. But I cannot irrevocably surrender my rights to this agent, turning him into my master; if I change my mind, his authority ends, and he cannot go ahead and kill me anyway (assuming I'm still in my right mind when I withdraw my consent).

So, in brief, my position is: death penalty no, abortion rights yes, suicide rights yes.

"My thinking has been heavily influenced by Henry Hazlitt's book The Foundations of Morality. ... I would be interested in learn-

ing the reactions to it of any and all of the people at FNF."

For Rich Hammer's comments on *The Foundations of Morality*, see his review on page 14 of this issue. As for myself, while there is much in Hazlitt's book that I admire, his basic ethical approach is antithetical to mine. Hazlitt writes:

"In the sense that all rules of conduct must be judged by their tendency to lead to desirable rather than undesirable social results, any rational ethics whatever must be utilitarian."

(Henry Hazlitt, *The Foundations of Morality* (Nash Publishing, Los Angeles, 1961), p. xii.)

"Ethics is a means rather than an ultimate end. It has derivative or 'instrumental' value rather than 'intrinsic' or final value." (Hazlitt, p. 34; emphasis his.)

I find this consequentialist approach to ethics unsatisfying, for several reasons.

First, I do not believe a consequentialist approach can provide a reliable grounding for a morality of cooperation. It may be true that *as a general rule* cooperation is a better strategy than aggression, but even Hazlitt admits that general rules have exceptions. Anyone who is interested in cooperation *merely* as a strategy is going to take advantage of those exceptions from time to time. Hazlitt points out, quite correctly, that life is uncertain, and that we cannot always be sure that an apparent exception is a real one. But this means only that a course of aggression should be decided on only with great caution, not that it should be forsworn entirely. Any attempt to ground morality on consequentialist considerations alone will sometimes yield the wrong answers.

Second, even when consequentialism gives us the right answers, it does so for the wrong reasons. Someone who refrains from murder simply as the result of a cost-benefit analysis, and who would happily have committed the murder if the calculation had gone the other way, is the moral equivalent of a murderer.

Third, consequentialism recognizes only one kind of value: what I call promotion-value. Promotion-value is value to which the appropriate response is some attempt to *promote* it; by contrast, what I call respect-value is value to which the appropriate response is *respect*. Consequentialism does not recognize the existence of respect-value.

The difference between these two kinds of value is best illustrated by the following example.

Suppose I believe the value of human life is solely a matter of promotion-value. Then I believe that what matters, all other things being equal, is the total amount of human life that gets preserved — the more the better. If I have a chance to kill one innocent person in order to save the lives of five other people (say, for example, that the five all need different organ transplants, and I can save them all by killing one healthy person and redistributing his organs to them), then I ought to do so, because I should choose the scenario where five live and one die over the scenario where one lives and five die — since I am trying to promote human life, and the scenario in which I commit murder is one in which a greater amount of human life is preserved.

Suppose, on the other hand, that I believe the value of human life is primarily a matter of respect-value rather than promotion-value. That is, I believe (non-aggressive) human life is a sacred thing and one should avoid taking it. In that case, I will refuse to kill the one person in order to save the five, because the sacredness of human life requires a hands-off approach. What matters is not just the end result, but the agent's relationship to it.

According to consequentialists, promotion-value is the only kind of value that exists; respect-value is dismissed as "mysterious" or "mystical." But I cannot see why respect-value should be considered any more mysterious than promotion-value. A moral theory that recognizes only one of these two kinds of value seems impoverished.

As Bernard Williams writes:

"It is because consequentialism attaches value ultimately to states of affairs, and its concern is with what states of affairs the world contains, that it essentially involves the notion ... that ... I must be just as much responsible for the things I allow or fail to prevent, as I am for things that I myself ... bring about. ... A feature of utilitarianism is that it cuts out ... the idea ... that each of us is specially responsible for what *he* does, rather than for what other people do. This is an idea closely connected with the value of integrity. [Utilitarianism] makes integrity as a value more or less unintelligible."

(Bernard Williams, in J. J. C. Smart and

(continued on page 25)

"Liberty" is a Bad Name by Richard O. Hammer

What do we libertarians want? Often we say "liberty" or "freedom." But these labels fall short. For one thing statisticians use these to mean something different. But even worse these labels mislead. By suggesting an absence of restraints these labels suggest



Richard Hammer

that we do not care for order. But we do care about order. Indeed order — of a particular sort — is what we want.

To show the order which I think we want, join me again in recalling the feeling in a private restaurant. In a restaurant you feel a context of rules. Your behavior is constrained. You know that the owner can kick you out. But usually you are quite happy to accept the rules, because the rules serve you as well as constrain you. This feeling of an environment of rules illustrates, I believe, how most "public" spaces will feel in our envisioned free nation.

Don't get nervous. There will be plenty of liberty in our free nation; no legislation will prohibit you from throwing food. But before you throw food you would be wise to understand what the owner of the establishment expects. So sometimes I wonder if we should drop the label "liberty" and replace it with "law and order".

We modern libertarians are not the first to fail in naming our value. I have the impression that John Locke, Adam Smith, and the American founders used "liberty" and

"freedom" much the way we do. And they led us in failing, I believe, to name the order which we desire.

Sometimes I fault Adam Smith for quitting too soon. He, having mastered his speciality, spied an Invisible Hand. But then he quit. If he had kept at it a little longer he might have found the Visible Hand, leaving us a simpler task. With the Visible Hand in sight, we could just point to it. I bet even Hillary would see it.

Several libertarians have suggested alternative labels: classical liberal, market liberal, self government, voluntarist, and cooperatism. While none of these charms me, the last two at least suggest that we understand that other people, besides ourselves, have rights.

I think a better name would point to spontaneous order, to that order which tends to grow in an environment of property rights. Belief in spontaneous order underlies, for me at least, my trust that people can manage with little or no government. We need a name which points to the force we trust. ▲

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Oppenheimer (from p. 8)

most money? Obviously, he needs the minimum number of people to get the maximum amount of money from the land. This leads to the dependency of the nobility on the federal government, as he no longer has the following he once had, economically or militarily.

Also, the states grow until they eventually have to compete with other states for land, since growth would also lead to the downfall of the feudal state. Any good capitalist would realize that if they provided a state with more freedom, they would attract the somewhat oppressed laborers from other states. The prejudiced states that held on to their concepts of elitism would be driven out of business. When this happens, when the state is no longer founded on political means, but rather on economic means, we see the development of the "freemen's citizenship". Thus, the state of the future would be the one guided by self-government, until the state itself no longer exists — only society. ▲

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Leviathan (from p. 14)

ernment in which both statisticians and libertarians hold power, with the libertarians gradually managing to defeat the statisticians; but if the libertarians are in complete charge, then they must bear the sole blame for the diminishing-but-continued aggression involved in a gradualist approach.

This strikes me as the most powerful form of the Principled Objection, and I am far from certain how to meet it. (I welcome suggestions!) But in the next installment I shall offer a tentative response. (Or, if you just can't wait that long, order a copy of the Proceedings from our recent Forum on Self-Government (clip form on page 17) to see the whole text now!) ▲

Next time: The Process of Reform

Roderick T. Long is Assistant Professor of Philosophy at the University of North Carolina at Chapel Hill. A frequent lecturer on libertarian topics, he is currently completing a book tentatively titled Aristotle on Fate and Freedom.

Democracy (from p. 13)

It took decades, from the time of the First American Revolution until the first few elections under the new Constitution, for the first stable political party system to form in the United States. It took even longer in Europe. In parts of the "Third World" it has yet to happen — and it may not, as Electronic Democracy may reach those places before Representative Democracy does.

Meanwhile, let's watch for clues on how Electronic Democracy will work. Let's also think carefully about who the friends of an Electronic free nation are. Which constituencies will want all human relations to be voluntary? We need to make allies of them whenever and wherever we find them, but especially when we can transcend the traditional left-right political divisions which characterize the old regime. That is the best protection against a climate of hatred. ▲

Imagineering Freedom: A Constitution of Liberty Part IV: The Rights of the People by Roderick T. Long

In the previous installments of this series, I have dealt primarily with the *structural* provisions of my Virtual-Canton Constitution. In this final installment, I turn to the document's guarantees of rights.

Below is an outline of the entire Constitution; the sidebar indicates the sections to be covered in what follows.

- **Preamble**
- **Part One: Provisions Subject to Amendment**
 - 1.1 The Government of the Free Nation [1.1.1-5]
 - 1.2 The Federal Legislature [1.2.1-17]
 - 1.3 The Federal Executive [1.3.1-8]
 - 1.4 The Federal Judiciary [1.4.1-16]
 - 1.5 The Virtual Cantons [1.5.1-9]
- **Part Two: Provisions Not Subject to Amendment**
 - 2.1 Provision for Amendments [2.1.1-2]
 - 2.2 Bill of Rights [2.2.1-18]
- **Part Three: Amendments**

Once again, text in bold is from my Virtual-Canton Constitution, while other text represents my commentary.

Part Two **Provisions Not Subject to Amendment**

2. 1 Provision for Amendments

2.1.1 The Legislature, whenever four-fifths of both Houses shall deem it necessary, shall propose Amendments to this Constitution (a process to be initiated by a four-fifths vote of the Parliament, and confirmed by a four-fifths vote of the Negative Council), which Amendments shall be valid to all intents and purposes as part of this Constitution when ratified by both four-fifths of the Virtual Cantons (to be determined as the laws of the individual cantons shall direct) and two-thirds of the Citizens, provided that no Amendment shall in any manner affect Part Two of this Constitution.

The structural provisions of the Constitu-

tion (found in Part One) I have made subject to amendment, because what is an appropriate structure for one set of circumstances may not be so for another, and I did not feel I had the wisdom to bind future Citizens of the Free Nation to one particular model for all time. Indeed, my own preference would be for the Free Nation to evolve over time into a purely anarcho-capitalist system, so I have no desire to set its initial structure into stone. In any case, I have warned in earlier segments against making a legal system's structure excessively rigid; if it cannot bend under social pressure, it may well break instead, thus thwarting the purpose for which it was instituted. (Notice, however, that I haven't exactly made the amendment process easy.) Guarantees of rights, on the other hand, are not a pragmatic matter but rather a matter of justice, and so they have been placed beyond the reach of amendment.

Note that this section, detailing which parts of the Constitution are amendable and which are not, has itself been placed in the unamendable section. In this respect it differs from the U. S. Constitution's Article V, which fails to include itself among the provisions there exempted from amendment. My worry was that if 2.1.1 of my Constitution were in an amendable section, it might be amended, in which case the "unamendable" section would lose its exemption from amendment — a nasty loophole I was determined to close.

Some readers have asked me why the judicial rights enumerated in 1.4.9-10 (guarantees of trial by jury, habeas corpus, presumption of innocence, right of counsel, compensation for false arrest or conviction, *etc.*; protection from detention without trial, detention incommunicado, unreasonable search and seizure, double jeopardy, self-incrimination, *etc.*) are placed in the amendable rather than the unamendable section. I'm not entirely happy with this myself. My reasoning was that the structure of the judicial branch belonged in the amendable section, and I wasn't sure how to divorce judicial rights from a particular conception of the judiciary. Any just judicial system would involve some judicial rights, but I'm not so sure that any just judicial system must involve precisely *these* judicial rights — as opposed to other, analogous provisions, appropriate to a somewhat different, though equally just, judicial system toward which the Free Nation might evolve, in part through amendment. For example, consider the right to trial by jury of one's peers. Why is this

preferable to trial by experts? Under a government, the answer is that such "experts" are likely to be the bought lackeys of the state, and trial by jury at least creates an opportunity for the potential victims of state oppression to defend one of their own. But would trial by jury be equally necessary in an anarchist system? Maybe not; maybe experts would be kept honest through competition, and so would become an acceptable alternative to jurors. To these sorts of questions, pertaining to procedural justice rather than to substantive justice, I felt it unwise to give answers that could not be amended. But I'm open to persuasion.

2.1.2 All Amendments shall collectively constitute Part Three of this Constitution; the Legislature shall have the power to enforce any Amendment by appropriate legislation, so far as such power is consistent with those provisions of the Constitution not subject to Amendment.

In many State constitutions, when the document is amended the earlier provisions are actually removed and new language is inserted in its place. I much prefer the model of the U. S. Constitution, where all the old, superseded language is retained in the sections where it originally stood, and amendments are grouped together in a section of their own; this makes it much easier to trace the process of amendment over the years and see how far the amenders have departed from the vision of the original framers.

Most of the provisions of the following "Bill of Rights" are self-explanatory (at least to a libertarian audience); so I shall comment only occasionally.

2. 2 Bill of Rights

2.2.1 The following protections of rights shall be binding upon the Virtual Cantons and all branches of the Federal Administration. Public officials and government employees possess no special rights, immunities, or exemptions not possessed by other Citizens; nor shall crimes against the Government of the Free Nation or its officers be labeled "treason," or regarded as more serious than crimes against other organizations or individuals. Moreover, apart from the rights of suffrage, referendum initiative, and the holding of public office under the Constitution of the Free Nation, which

are reserved to Citizens alone, the following rights apply to all persons equally, regardless of Citizenship or residency, with the qualification that persons judged incompetent (*e.g.*, young children, or the mentally ill) may have their rights suspended in order to secure those ends to which, so far as can be established, they would be likely to consent if competent; but such persons retain in full force, as do others acting on their behalf, the right to challenge in court their status as incompetent no less often than once a year, and to sue for false judgment. Every person of the age of m_{13} or greater shall be assumed competent, and every person under the age of m_{13} shall be assumed incompetent, until proven otherwise in a Federal court. The standard of evidence necessary to prove incompetence shall be higher than the standard of evidence necessary to prove competence.

In general, I have striven to avoid committing the Virtual-Canton Constitution one way or another on issues that divide libertarians, but I have been forced here to touch upon the issue of children's rights, because I needed to determine the standard of competence. (Otherwise the government could simply declare all its enemies incompetent and deprive them of all civil rights.)

I approach this topic by considering the following question: *Why* is paternalism legitimate in the case of children but not in the case of adults? It will not do to simply answer that children are better off when treated paternalistically, because libertarians are committed to rejecting paternalism for adults even when adults would benefit. So the crucial difference between children and adults with regard to paternalism cannot be a matter of benefit. Rather, I think, the difference is that a child's capacity for genuine consent is impaired (whereas an adult is ordinarily assumed to be *capable* of making wise choices even if he or she actually makes foolish ones). In that case, a child should be regarded in the same way as a normal adult temporarily under the influence of drugs, hypnosis, insanity, or Homeric sirens.

In turn, an adult whose capacity for genuine consent is impaired is analogous to an adult whose capacity for consent is completely disabled — a comatose person, say. When we make decisions for a comatose patient, we are obligated to follow the de-

isions the patient *would* have made (as best we can determine) if conscious. The reason is that it is only to the extent that we are acting as the patient's *agent* that our decisions can escape the charge of aggressive interference. The same principle applies where a person's capacity for consent is impaired; if a person's mental condition is such that what they appear to be consenting to is not what they would consent to if in their right minds, we may override their "false" preferences in pursuit of their true ones. But the mere fact that we disagree with other people's preferences is not sufficient to justify labeling those preferences as false; the crucial factor is the presence or absence of the *capacity* for making intelligent choices, not the presence or absence of intelligent choices themselves.

In short, then, my position is that it is the undeveloped nature of a child's capacity for rational judgment that justifies paternalistic interference in that case. But of course such development or lack thereof is a matter of degree; as the child matures, its expressed preferences (as manifested in action) become a more and more reliable guide to its true preferences, and paternalistic impulses must govern themselves accordingly. At full maturity, barring unusual mental ailments, there are no longer any grounds for assuming a gap between expressed and true preference.

Yet not all children mature at the same rate, or reach full rational capacity at the same age; and it would create social havoc to decide each instance on a case-by-case basis. On the other hand, simply creating an ironclad, universal "age of majority," while it lowers uncertainty, is surely unjust to those who mature more quickly or slowly than the "benchmark" child (as well as to those entering into contracts with them). Such hard-and-fast line-drawing also creates such absurdities as, *e.g.*, the legal fiction that any sexual contact between a person of age 18-plus-one-day and a person of age 18-minus-one-day is the statutory equivalent of rape. The fairest solution, to my mind, is to pick a single universal age of majority, but allow exceptions through litigation; the age of majority simply determines the point at which the presumption of incapacity yields to a presumption of capacity, rather than serving as a rigid inescapable iron barrier. Once this flexibility is introduced, the precise age that is picked as the cut-off for majority becomes less important (I have represented it here as a variable), though my own personal suspicion is that 18 is rather too high. (I may change my mind as I grow older, especially if I have children!)

2.2.2 The laws of the Free Nation shall apply equally to all persons regardless of gender, ethnicity, opinions, religion, national origin, or peaceful lifestyle.

Originally I included economic status on this list. One reader pointed out that some Virtual Cantons might seek to means-test some of their provisions, and I could see nothing wrong with this. So I dropped economic status from the list. I'm now inclined to think there's nothing wrong with a Virtual Canton attempting to establish itself as a lobby for a particular religious or ethnic constituency, so perhaps the entire list should be re-examined. One possibility is to keep these restrictions as binding on the Federal Administration, but to release the Cantons from them. I'm torn here between wanting to give the Cantons maximum flexibility, and trying to guard against Canton-level tyranny. I welcome suggestions.

2.2.3 No law shall abridge the right of each person to do as he or she chooses with his or her own person and property, so long as he or she does not interfere, by force or fraud (or the threat thereof), with the equal right of others to do as they choose with their own persons and property.

2.2.4 No law shall abridge the right of persons to the peaceful control of their own bodies, nor interfere with voluntary consensual or contractual relations among persons, or the right to form cooperative ventures of any kind; nor invade the privacy of peaceful persons, nor by confiscation, expropriation, regulation, redistribution, restriction, control, or any other means abridge the right of any person to acquire property by homestead, purchase, or gift, or to use, control, exchange, lease, sell, transfer, bequeath, dispose of, or in any manner enjoy, their property without interference, until and unless the exercise of their control infringes the freedom of others; nor shall private property be fully or partially taken for public use without the consent of, and mutually agreeable compensation to, the owner.

This last provision is derived from the "takings" clause of the Fifth Amendment, but improves on it in ways a libertarian will recognize.

2.2.5 No law shall create a class of victimless or consensual crimes.

2.2.6 No law shall abridge the right of freedom of association; any person may associate or transact with any other person or refuse to associate or transact with any other person for any reason, and the proprietor or lawful possessor of any movable or immovable property may exclude or refuse admission to any other person, except where such property is being used to violate the rights of others.

2.2.7 No law shall abridge the freedom of thought and feeling, or their peaceful expression or dissemination, as in speech, press and other media, artistic depiction, or religious practice; nor shall any law be made to promote or hinder religion, artistic culture, scientific research, or communication; nor shall the Government of the Free Nation operate or support any school, college, or university.

2.2.8 No law shall abridge the right of the people peaceably to assemble, or to petition the government for a redress of grievances.

The U. S. Constitution's version of this last says "and" rather than "or," making room for the interpretation that the right of assembly is *limited* to the purpose of petition; hence my revision.

2.2.9 No law shall countenance the existence of slavery, conscription, indenture, or any other form of involuntary servitude within the Free Nation, or in any place subject to its jurisdiction.

This too is controversial; many libertarians see nothing wrong with indentured servitude, contractually entered into. My case against it may be found in "Slavery Contracts and Inalienable Rights: A Formulation," in *Formulations*, Vol. II, No. 2 (Winter 1994-95). In general, as I've mentioned, I've tried to avoid committing this Constitution one way or another on issues that are controversial within the libertarian movement, since this document aims to attract libertarian consensus. But on this issue I feel too strongly; as I wrote in the article cited:

"Our classical liberal forebears fought a long hard battle against slavery, that dis-

grace upon human civilization. Two centuries ago, a newborn Free Nation's compromise with slavery started it down the path that eventually destroyed its freedom. As for our future, a Free Nation that undertook to enforce slavery contracts would not be a Free Nation worth fighting to build or to defend."

2.2.10 No law shall restrict or hamper the free and peaceful movement of persons, goods, or ideas within or across the borders of the Free Nation.

2.2.11 No law shall abridge the right of any person to use or issue any commodity or item as currency; nor shall the Government of the Free Nation engage in monetary regulation or issue of any sort.

2.2.12 No law shall abridge the right of self-defense by victims or their agents against initiators of aggression (including governments or their agents), including the right, to own, manufacture, sell, and bear arms; but the right of self-defense shall not be construed to license resistance on the part of such aggressors to the legitimate use of force against them in defense of the rights of their victims.

2.2.13 No law shall establish occupational licensure, nor make or claim grants of monopoly privilege, nor restrict competition or free entry into any profession or industry, including the services of adjudication, protection, and enforcement of legitimate rights.

This provision establishes the Free Nation as technically an anarchy rather than a state.

2.2.14 No person shall be convicted for violating government secrecy classifications unless the government discharges its burden of proving that the publication violated the right of privacy of those who have been coerced into revealing confidential information to government agents, or disclosed defensive military plans so as to materially impair the capability to respond to attack; but it shall be a valid defense to such prosecution that information divulged shows that the government has violated the law.

This last language is borrowed from the Libertarian Party Platform.

2.2.15 Any owner or owners of land may secede with their property from the jurisdiction of the Free Nation, whereupon their territory shall become a sovereign independent state in accordance with international law.

This provision makes possible a number of competing free nation experiments, organized along different lines, within the circumference of the Free Nation but not within its borders. Imagine one nation adopting the Oceania Constitution, another organizing itself as a proprietary community, still another going for full-fledged anarcho-capitalism with competing protection agencies, while others try out systems based on cash charity or labor charity (as described by Phil Jacobson in his article "Three Voluntary Economies," on page 9 of this issue). What better way to ascertain the strengths and weaknesses of different approaches, than to let the free-market discovery process do its work?

To be sure, some of the new nations formed by secession from the Free Nation might be statist in character. But it might be no bad thing to allow the statists an "out" from a libertarian system that might initially frighten them. Let them establish their statist utopias and see for themselves that they don't work; meanwhile, the Free Nation will be next door, providing asylum to those who find they have had enough.

2.2.16 The enumeration in this Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

2.2.17 The powers not delegated to the Federal Administration by this Constitution, nor prohibited by it to the Virtual Cantons, are reserved to the Cantons respectively, or to the people.

These last two provisions are borrowed from the U. S. Constitution.

2.2.18 The existence of a state of emergency shall not be construed to limit the individual rights, or to expand the governmental powers, herein enumerated.

And there, for now, my Virtual-Canton Constitution ends.

Let me close with a few remarks about the status of this constitution. To start with, I make no claim to have thought through

everything a constitution like this would need. Certainly there is nothing final about the provisions set out so far; this series of articles has been based on Version 5 of the document, and I am already at work on Version 6. I'm sure there's plenty I've overlooked, expressed ambiguously, given insufficient attention to, and so forth. If anything like this document were ever to be implemented in reality, I would expect it to pass through many more revisions, and not just from my own pen. (Legal experts would have to go over it with a fine-tooth comb!) One of the aims of this Virtual-Canton Constitution was to serve as a possible starting-point or talking-point (no doubt one among many) for future constitution-making by participants in the free nation movement; I eagerly invite advice, criticism, suggestions, and other input from the libertarian community.

Nor do I present this Virtual-Canton Constitution as my vision of the ideal free society. For one thing, my ideal free society wouldn't have anything in it that so closely resembled a government. For another, my ideal free society would contain protections of rights that are absent from this document. The Virtual-Canton Constitution is adapted to the goals of the Free Nation Foundation: to build *consensus*, within the libertarian community, on an institutional arrangement toward which the free nation movement could then work. While I am pessimistic about the ability of any institutional arrangement to attract a particularly large libertarian consensus, I think an institutional arrangement that combines features of anarchy and minarchy stands a chance of attracting a larger libertarian consensus than any purely anarchistic or purely minarchistic set-up. (Also, leavening anarchy with a bit of minarchy would allow a free nation to turn a governmental face to the outside world, thus gaining an international legitimacy vital to its security.)

The aim of attracting a libertarian consensus has also motivated me to leave out of my Bill of Rights various rights-protections which I would favor, but which are controversial among libertarians. If I were writing this Constitution to my own specifications, it would include such items as the following:

Addendum to 2.2.1: Any animal possessed of intelligence above a certain

level shall be considered a person (competent or incompetent, as the courts may judge) under this Constitution, the specification of such level, together with the manner of testing it, to be determined by law; except that such specification shall not exclude the average dolphin or gorilla, or any minimally competent human.

Addendum to 2.2.2: Nor shall the courts grant to any profession or body of thought an effective "monopoly on truth" by permitting its findings to be entered as evidence while at the same time denying the same privilege to its rivals.

Addendum to 2.2.9: Nor shall any person be compelled by law to serve as an incubator for an unborn fetus; the right to defend one's bodily integrity extends to the right to abort an unwanted pregnancy.

Addendum to 2.2.12: Retributive punishment, or any coercive treatment disproportionate to the seriousness of the aggression or exceeding that required to restrain an aggressor, protect actual or potential victims of that aggressor, or secure restitution, is hereby prohibited.

Addendum to 2.2.13: Nor shall any law grant copyrights or patents, or recognize their legitimacy; this provision shall not, however, be construed to license the fraudulent marketing of one person's work under the false pretense that it is another's.

These provisions, I suspect, would be severe impediments to widespread libertarian acceptance, so I have left them (and others like them) out.

Nor is my work on this Constitution meant to suggest that I dismiss rival approaches, such as the proprietary-community approach championed by many in the New Country Foundation. I see the free nation movement as encompassing a variety of different strategies, each with its own strengths and weaknesses. But I suspect that a sizable group within the prospective participants in any free nation endeavor would favor a constitutional approach, and so this Constitution is meant as a starting-point for discussions within *that* group; in dealing with other groups I might well peddle something different. My hope is to participate in as many libertarian conversations as possible, learning from each, and contributing whatever I can. Δ

Inalienable Rights (from p. 20)

Bernard Williams, *Utilitarianism: For and Against* (Cambridge University Press, 1973), pp. 95-99.)

My other major quarrel with Hazlitt is over his subjectivism:

"All valuation is in origin necessarily subjective."
(Hazlitt, p. 162.)

"Unless our *oughts* are to be purely arbitrary, purely dogmatic, they must somehow grow out of what *is*. Now the connection between what is and what ought to be is always a *desire* of some kind. ... All our desires may be generalized as desires to substitute a more satisfactory state of affairs for a less satisfactory state."
(Hazlitt, p. 12.)

I have several objections to this.

First, to my way of thinking a desire for X is a *response* to the (perceived) value of X, not the *creator* of X's value. If merely desiring something were sufficient to make it genuinely valuable, then a scientific ethics of the kind Hazlitt aspires to establish would be impossible, since any X Hazlitt chooses to set up as a moral value can be invalidated simply because someone chooses to value the opposite of X.

Second, Hazlitt says that everyone necessarily desires maximum satisfaction. He makes clear that he interprets this in a psychologically deterministic fashion. I don't think psychological determinism is a coherent or defensible philosophical doctrine; still less do I see how psychological determinism, ruling out as it does the possibility of free choice, can be made consistent with the notion of *ethics*, which presupposes moral responsibility. Moreover, the details of Hazlitt's psychological determinism are rather unrealistic: Hazlitt makes clear that the "satisfaction" he posits as the ultimate goal of all our actions is meant to be understood as a subjective psychological state, analogous to "pleasure" but with a less restrictive connotation. In other words, Hazlitt is saying that whenever we have a desire, the ultimate goal of that desire is some state of our own consciousness. If that were true, how could people ever desire to die (as they frequently do — even, or perhaps especially, people

who don't believe in an afterlife)? Stranger yet, why would anyone ever write a will, which involves expressing desires for things to happen after one's death? Why would anyone care about what happens to our loved ones after we are dead, since desires about this are not desires to be in some psychological state? Nozick's critique of subjectivism is relevant here:

"Suppose there were an experience machine that would give you any experience you desired. ... Should you plug into this machine for life, preprogramming your life's experiences? ... Of course, while in the tank you won't know that you're there; you'll think it's all actually happening. ... Would you plug in? *What else can matter to us, other than how our lives feel from the inside?* ...

What does matter to us in addition to our experiences? First, we want to *do* certain things, and not just have the experience of doing them. ... A second reason for not plugging in is that we want to *be* a certain way, to be a certain sort of person. ... Thirdly, plugging into an experience machine limits us to a man-made reality, to a world no deeper or more important than that which people can construct. There is no *actual* contact with any deeper reality, though the experience of it can be simulated. ...

We learn that something matters to us in addition to experience by imagining an experience machine and then realizing that we would not use it." (Robert Nozick, *Anarchy, State, and Utopia* (Basic Books, New York, 1974), pp. 42-44.)

In short, Hazlitt's whole psychological theory strikes me as somewhat primitive and unsophisticated, and the ethical theory he builds on it inherits the weaknesses of its foundation. *The Foundations of Morality* has its strengths, but these strengths, like its author's, are primarily in the areas of economic and political theory. In this area Hazlitt might be seen as a valuable precursor to the work of Robert Axelrod, whose book *The Evolution of Cooperation* documents the practicality of what Hazlitt calls *mutualism* or *cooperatism*. Δ

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Heritage

Taxation: Voluntary or Compulsory?

by F. W. Read and Benjamin R. Tucker

Editor's Note: Under the heading "Heritage," we propose from time to time to offer selections from early libertarian classics which, while in the public domain, are now out of print, difficult to obtain, and/or largely forgotten. These selections will be chosen with an eye to the contribution they can make to the work of the Free Nation Foundation.

The present selection is a condensation of a debate between two 19th-century friends of liberty: F. W. Read, defending limited government, whose contributions appeared as letters in the British classical liberal journal Jus, and Benjamin Tucker, defending free-market anarchism, whose contributions appeared as editorials in Liberty, the foremost American anarchist journal of the period.

Read (Jus, 17 June 1887): The voluntary taxation proposal really means the dissolution of the State into its constituent atoms, and leaving them to recombine in some way or no way, just as it may happen. There would be nothing to prevent the existence of five or six "States" in England, and members of all these "States" might be living in the same house! The proposal is, it appears to me, the outcome of an idea in the minds of those who propound it that the State is, or ought to be, founded on contract, just as a joint-stock company is. ... The explanation of the whole matter, I believe, is that ... the State is a social organism, evolved as every other organism is evolved, and not requiring any more than other organisms to be based upon a contract

Tucker (Liberty, 30 July 1887): Some very interesting and valuable discussion is going on in the London Jus concerning the question of compulsory *versus* voluntary taxation. ... The idea that the voluntary taxationist objects to the State precisely because it does not rest on contract, and wishes to substitute contract for it, is strictly correct, and I am glad to see (for the first time, if my memory serves me) an opponent grasp it

It is perfectly true that voluntary taxation

would not necessarily "prevent the existence of five or six 'States' in England," and that "members of all these 'States' might be living in the same house." But I see no reason for Mr. Read's exclamation point after this remark. What of it? There are many more than five or six Churches in England, and it frequently happens that members of several of them live in the same house. There are many more than five or six insurance companies in England, and it is by no means uncommon for members of the same family to insure their lives and goods against accident or fire in different companies. Does any harm come of it? Why, then, should there not be a considerable number of defensive associations in England, in which people, even members of the same family, might insure their lives and goods against murderers or thieves? Though Mr. Read has grasped one idea of the voluntary taxationists, I fear that he sees another much less clearly, — namely, the idea that defence is a service, like any other service; that it is labor both useful and desired, and therefore an economic commodity subject to the law of supply and demand; that in a free market this commodity would be furnished at the cost of production; that, competition prevailing, patronage would go to those who furnished the best article at the lowest price; that the production and sale of this commodity are now monopolized by the State; that the State, like almost all monopolists, charges exorbitant prices; that, like almost all monopolists, it supplies a worthless, or nearly worthless, article; that ... the State takes advantage of its monopoly of defence to furnish invasion instead of protection ... and, finally, that the State ... enjoys the unique privilege of compelling all people to buy its product whether they want it or not. If, then, five or six "States" were to hang out their shingles, the people, I fancy, would be able to buy the very best kind of security at a reasonable price. ...

All these considerations, however, are disposed of, in Mr. Read's opinion, by his final assertion that "the State is a social organism." ... Again I ask: What of it? Suppose the State is an organism, — what then? ... Yes; so is a tiger. But unless I meet him when I haven't my gun, his organism will speedily disorganize. The State is a tiger seeking to devour the people, and they must either kill or cripple it.

Read (Jus, date uncertain): The tiger is an organism, says Mr. Tucker, but if shot he

will be speedily disorganized. Quite so; but nobody supposes that the atoms of the tiger's body derive any benefit from the process. Why should the atoms of the body politic derive any advantage from the dissolution of the organism of which *they* form a part? That Mr. Tucker should put the State on a level with churches and insurance companies is astounding. Does Mr. Tucker really think that five or six "States" could exist side by side with the same convenience as an equal number of churches? The difficulty of determining what "State" an individual belonged to would be insuperable. How are assaults and robberies to be dealt with? Is a man to be tried by the "State" of which he is a citizen, or by the "State" of the party aggrieved? If by his own, how is a police officer of that "State" to know whether a certain individual belongs to it or not? The difficulties are so enormous that the State would soon be reformed on the old lines. Another great difficulty would be that the State would find it impossible to make a contract. If the State is regarded as a mere collection of individuals, who will lend money on state security? The reason the State is trusted at all is because it is regarded as something over and above the individuals who compose it at any given time; because we feel that, while individuals die, the State remains, and that the State will honor State contracts, even if made for purposes that are disapproved by those who are the atoms of the State organism. ... Again, is it no advantage to us to be able to make treaties with foreign countries? But what country will make a treaty with a mere mass of individuals, a large portion of whom will be gone in ten years' time?

But apart from the question of organism or no organism, does not history show a weakening of the State in some directions, and a continuous strengthening in other directions? We find a gradual disappearance of the desire "to furnish invasion instead of protection," and, as the State ceases to do so, the more truly strong does it become, and the more vigorously does it carry out what I regard as its ultimate function,—that of protecting some against the aggression of others. ... What Individualists are trying to do is to show the State that, when it regulates factories and coal mines, and a thousand and one other things, it is acting against its own interests. When the State has learned the lesson, the meddling will cease.

Tucker (*Liberty*, 22 October 1887): In answer to Mr. Read's statement ... I cannot do better than to quote the following passage

from an article by J. William Lloyd in No. 107 of *Liberty*:

... individuals complex, secondary, tertiary, etc. [are] formed by the aggregation of primary individuals or of individuals of lesser complexity. Some of these individuals of a high degree of complexity are true individuals, *concrete*, so united that the lesser organisms included cannot exist apart from the main organism; while others are imperfect, *discrete*, the included organisms existing ... quite as well, or better, apart than united. ...

... The State, unlike society, is a discrete organism. If it should be destroyed to-morrow, individuals would still continue to exist. Production, exchange, and association would go on as before, but much more freely, and all those social functions upon which the individual is dependent would operate in his behalf more usefully than ever. The individual is not related to the State as the tiger's paw is related to the tiger. Kill the tiger, and the tiger's paw no longer performs its office; kill the State, and the individual still lives and satisfies his wants. ...

Mr. Read finds it astounding that I should "put the State on a level with churches and insurance companies." I find his astonishment amusing. Believers in compulsory religious systems were astounded when it was first proposed to put the church on a level with other associations. ... But the political superstition has replaced the religious superstition, and Mr. Read is under its sway.

I do not think "that five or six 'States' could exist side by side with" *quite* "the same convenience as an equal number of churches." In the relations with which States have to do there is more chance for friction than in the simply religious sphere. But, on the other hand, the friction resulting from a multiplicity of States would be but a mole-hill compared with the mountain of oppression and injustice which is gradually heaped up by a single compulsory State. It would not be necessary for a police officer of a voluntary "State" to know to what "State" a given individual belonged, or whether he belonged to any. Voluntary "States" could, and probably would, authorize their executives to proceed against invasion, no matter who the invader or invaded might be. Mr. Read will probably object that the "State" to which the invader belonged might regard his arrest as itself an invasion, and proceed against the "State" which

arrested him. Anticipation of such conflicts would probably result exactly in those treaties between "States" which Mr. Read looks upon as so desirable, and even in the establishment of federal tribunals, as courts of last resort, by the co-operation of the various "States," on the same voluntary principle in accordance with which the "States" themselves were organized.

Voluntary taxation, far from impairing the "State's" credit, would strengthen it. In the first place, the simplification of its functions would greatly reduce, and perhaps entirely eliminate, its need to borrow, and the power to borrow is generally inversely proportional to the steadiness of the need. It is usually the inveterate borrower who lacks credit. In the second place, the power of the State to repudiate, and still continue its business, is dependent upon its power of compulsory taxation. It knows that, when it can no longer borrow, it can at least tax its citizens up to the limit of revolution. In the third place, the State is to be trusted, not because it is over and above individuals, but because the lender presumes that it desires to maintain its credit and will therefore pay its debts. This desire for credit will be stronger in a "State" supported by voluntary taxation than in a State which enforces taxation.

All the objections brought forward by Mr. Read (except the organism argument) are mere difficulties of administrative detail, to be overcome by ingenuity, practice, discretion, and expedients. ... They seem "enormous" to him; but so seemed the difficulties of freedom of thought two centuries ago. ...

It is true that "history shows a continuous weakening of the State" ... This tendency is simply the progress of evolution towards Anarchy. ... It is exactly in the line of this process ... that the Anarchists demand ... the substitution of voluntary for compulsory taxation. ... They propose to create a public sentiment that will make it impossible for the State to collect taxes or in any other way invade the individual. Regarding the State as an instrument of aggression, they do not expect to convince it that aggression is against its interests, but they do expect to convince individuals that it is against their interests to be invaded. ...

For myself I do not think it proper to call voluntary associations States, but, enclosing the word in quotation marks, I have so used it because Mr. Read set the example. Δ

Every spot of the old world is overrun with oppression. Freedom hath been hunted round the globe. Asia and Africa have long expelled her. Europe regards her like a stranger, and England hath given her warning to depart. O! receive the fugitive, and prepare in time an asylum for mankind.

— Thomas Paine, Common Sense (1776)

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